The Solicitors' Journal

Vol. 99 May 14, 1955 No. 20

CURRENT TOPICS

Signatures

OUR note, at p. 305, *ante*, of the case of *London County Council* v. *Agricultural Food Products, Ltd.*, gives a full summary of the leading judgment, that of DENNING, L.J., in which, if we may summarise still further, his lordship treats the case before him as being exceptional in that a signature made by an agent was permissible, whereas "in the ordinary way when a formal document is required to be 'signed' by a person it can only be done by that person himself writing his own name on it . . . with his own hand." It is with the greatest respect that we now point out that this is a reversal of the emphasis put upon the matter by the other members of the Court of Appeal. Both ROMER and PARKER, L.JJ., [1955] 2 W.L.R., at pp. 929, 930, adopted the position taken up by Blackburn, J., in *R.* v. *Kent JJ.* (1873), L.R. 8 Q.B., at p. 307, when he formulated the statement cited in several books on Agency to the effect that at common law where a person authorises another to sign for him the signature of the person so signing is the signature of the person authorising it, although there may be cases where a statute requires personal signature. However, all the learned lords justices agreed that the notices to quit which were in issue before them did not, by any statute or in the context of the tenancy agreements, require to be signed personally by the person who was by agreement empowered to give notice. An agent's signature in the principal's name would suffice, provided that the agent had proper authority so to sign; and new trials were ordered to enable the question of authorisation to be gone into.

Per Procurationem

IN neither of the notices did the persons who wrote the signature add anything to indicate that the signature was being made by an agent for the county council valuer, who was entitled under the tenancy agreements to give notice. While holding this, on the decisions, not to be a fatal flaw, DENNING, L.J., clearly thought that the valuer's assistants who made the signatures should have added "p.p." and their initials. Not to do so is bad practice, said his lordship, because it is misleading. Yet we believe it is done in many transactions of modern commercial life. And provided that the writer is acting within the scope of his authority, which is often apparent from the circumstances, the recipient of a document signed without qualification in the name of the writer's principal is normally in as good a position as if he had the principal's autograph. Abuse of authority, as distinct from lack of it, does not affect him. On the other hand, a procuration signature expressed as such may operate as notice of limited authority, and anyone who wishes to rely on it would be wise to satisfy himself of the actual limits, as Bayley, J., admonished in the case of *Attwood* v. *Munnings* (1827), 7 B. & C., at p. 283. But commercial men take signatures *per procurationem* as a rule only in trivial or temporary cases, or where the authority is clear, such as a receipt for goods

CONTENTS

delivered to a known or liveried carman. In other important instances the production of evidence of authority along with the signature " per pro." would often give more trouble to all parties than to secure the principal's personal signature.

Town and Country Planning: Mortgagees' Claims

IN the current issue of the *Law Society's Gazette* members are invited to send details to the Secretary of cases in which hardship to mortgagees has arisen or appears likely to arise in relation to compensation claimable now or in the future under Pt. II of the Town and Country Planning Act, 1954 (which relates to compensation for planning restrictions). It had been suggested in the February issue of the *Law Society's Gazette* that the exclusion from the Regulations of 1955 of a mortgagee whose mortgage was created between 1st July, 1948, and 1st January, 1955, and was supported by an assignment of the appropriate claim under Pt. VI of the 1947 Act seemed wrong, because if no claim arose under Pt. I or Pt. V of the Act of 1954, the whole of the Pt. VI claim would, under the Act, have been converted on 1st January, 1955, into an " unexpended balance of established development value " attached to the land itself; if, subsequently, the land were adversely affected by a planning decision, the mortgagee's security would to that extent be diminished, and the regulations would give him no right to claim or to receive any compensation payable to the landowner under Pt. II of the Act of 1954. The Council are not aware that any case of hardship has ever arisen, but they are not satisfied that the point is academic. Hardship, they think, can only be said to arise where the advance secured by the mortgage (including the assignment of the claim) related to more than the " existing use " value of the land.

Vendors' Solicitors' Costs on Building Estate Development

SOLICITORS acting on behalf of vendor-clients on the development of building estates are asked by the Council of The Law Society in the current issue of the *Law Society's Gazette* to communicate with the local law societies where they wish to know whether they can reduce their charges for repetitive work. The Council's view is that the question of the reduction of charges in such circumstances is primarily one for decision by the local law society in the area where the property is situated, having regard to the varying conditions which obtain in different localities (e.g., as to what should constitute a " building estate " for this purpose). The Council have given general advice to the local law societies.

Obscene Publication Law

WITH the dissolution of Parliament the Bill dealing with obscene publications has had to be abandoned. In the meantime, pending further decision on the future of this proposed legislation, the *Justice of the Peace and Local Government Review* has published in pamphlet form (price 2s.) the excellent series of articles on the subject which appeared in that periodical last year. This sane survey of a subject which has inspired differing opinions from century to century, and even decade to decade, comes out at a time when people are concentrating on party issues. It is well to bear in mind that whichever Government is in power it will have to deal with this vital problem. It will still be necessary to decide whether (to quote Mr. Mead in the case of the Warren Gallery and D. H. Lawrence's paintings) " the most splendidly painted pictures in the universe might be obscene " or whether the law is to be as laid down by Stephen, J., that publication is justified even of obscenities, if necessary for the purposes *inter alia* of art, science or literature, unless it is made in a manner or to an extent exceeding that required for the public good. There is no doubt as to the preference of the author of the pamphlet.

Pensions for Self-Employed Persons

" UNLESS something is done reasonably quickly " said the President of the Institute of Chartered Accountants, Mr. DONALD V. HOUSE, at the 74th Annual Meeting of the Institute, on 4th May, " the professional classes will find difficulty in survival." He was speaking of the failure to implement the recommendations of the Millard Tucker Committee with regard to pensions for the self-employed. He expressed the hope " that matters will be set right when the main report of the Royal Commission on Taxation of Profits and Income is at last published," and said that the loss of the impartial, highly skilled and very necessary services of professional persons would be a tragedy. Further proof that The Law Society intend to do everything possible to avert the tragedy is to be found in the May issue of the *Law Society's Gazette*, where the Council express their intention to raise the matter once again with the Government soon after the General Election. No doubt the General Council of the Bar and the Institute of Chartered Accountants will join in such representations, as they did in the deputation to the Chancellor on 2nd March, which resulted in his undertaking to consider this matter.

The Solicitors' Journal: Change of Address

Owing to the imminent rebuilding of our present war-damaged premises in Fetter Lane, E.C.4, readers are asked to note that on and after 23rd May, 1955, the address of all departments of the SOLICITORS' JOURNAL will be

21 Red Lion Street, London, W.C.1

The telephone number remains unchanged (CHA 6855)

Company Law and Practice

TWO RECENT DECISIONS

Two recent decisions, that of the House of Lords in *Harold Holdsworth & Co. (Wakefield), Ltd.* v. *Caddies* [1955] 1 W.L.R. 352; *ante*, p. 234, and that of Harman, J., in *Welch* v. *Bank of England* [1955] 2 W.L.R. 757; *ante*, p. 236, are of general interest to the company lawyer.

MANAGING DIRECTORS: THE HAROLD HOLDSWORTH CASE

In *Harold Holdsworth & Co. (Wakefield), Ltd.* v. *Caddies* a director had been appointed managing director of a company for a period of five years. The agreement provided that the respondent " shall be and he is hereby appointed a managing director of the company and as such managing director he shall perform the duties and exercise the powers in relation to the business of the company and the businesses (howsoever carried on) of its existing subsidiary companies at the date hereof, which may from time to time be assigned to or vested in him by the board of directors of the company." The

agreement also provided that the respondent should devote his whole time to his duties under the contract and should obey the orders and directions of the board. At the date of the agreement there were three subsidiary companies, of which one was a textile company. Differences having arisen later, the board resolved that the respondent should confine his attention to the textile company only. The respondent claimed that this resolution was a repudiation of the agreement, and brought an action for breach of contract. The House of Lords held that on the true construction of the particular agreement the board had the power to confine the managing director's duties to the management of the one particular textile company, as the appointment of the respondent by the agreement to be a managing director of the company, and his description in the agreement as managing director, did not limit the powers of the board under the subsequent words of the agreement.

The decision was, of course, based on the construction of the terms of the particular contract of service. It forms, however, a useful background for some brief notes on the position of a managing director under the more general provisions found in Table A in Sched. I to the Companies Act, 1948.

Article 107 of Table A provides that "The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall not, whilst holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he cease from any cause to be a director." As the Lord Chancellor observed in *Harold Holdsworth's* case (at p. 357): "That paragraph states specifically that the board can fix such terms as they think fit, while the director so appointed gets the advantage of not being subject to retirement by rotation."

With regard to the latter part of art. 107, it will be remembered that in *Read* v. *Astoria Garage (Streatham), Ltd.* [1952] 2 T.L.R. 130, the Court of Appeal held that the appointment of a managing director under the corresponding article of Table A in Sched. I to the Companies Act, 1929, might be determined by the company in general meeting at any time without notice. In *Read's* case there was no separate contract of service. If, however, there is a contract of service for a fixed term of years, apart from the articles, and it is sought to determine the contract by a power not present in the articles of association of the company as they stood at the date of the contract, but inserted in the articles by a subsequent alteration, then, if the managing director is removed from his position before the expiry of the fixed term, he can sue for damages (*Southern Foundries* (1926), *Ltd.* v. *Shirlaw* (1940), 56 T.L.R. 637).

To return to the 1948 Table A. By art. 108 the managing director is to receive such remuneration as the directors may determine, and, by art. 109, "The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any such powers."

Strangers dealing with a company are entitled to assume, as against the company, that all matters of internal management have been duly complied with. So that when there is a power of delegation to a managing director a person contracting with the company is entitled to assume that the power has been duly exercised (*Clay Hill Brick & Tile Co., Ltd.* v. *Rawlings* [1938] 4 All E.R. 100). If, therefore, a person contracting with a company first examines the articles and finds that the managing director could have the power which he purports to exercise, he is not concerned with the question as to whether or not such power has in fact been conferred upon the managing director unless, possibly, the proposed agreement is so unusual that the other party is put upon inquiry as to whether in fact the necessary power has been conferred upon the managing director. In this connection it may be useful to quote the passage from Halsbury's Laws of England, 3rd ed., vol. 6, para. 601, cited with approval by the Lord Chancellor in *Harold Holdsworth's* case: "A managing director may either be merely a director with additional functions and additional remuneration, or else he may be a person holding two distinct positions, that of a director and that of a manager."

There must, however, be a reliance in fact upon the articles, for a person who, at the time of entering into a contract with a company, has no knowledge of the company's articles of association cannot rely on those articles as conferring ostensible or apparent authority on the agent of the company (for example, a managing director) with whom he deals (*Rama Corporation, Ltd.* v. *Proved Tin & General Investments, Ltd.* [1952] 1 T.L.R. 709).

Forged Transfers: The Bank of England Case

The judgment of Harman, J., in *Welch* v. *Bank of England* is valuable in that it contains a useful summary of many of the leading cases on forged transfers and the effect thereof.

A forgery is a nullity and no title can be passed by it, so that if a shareholder's name is removed from the register as the result of a forged transfer, on discovering the forgery he can require the company to restore his name to the register and to pay to him any dividends missed during the period when his name was improperly removed. In *Welch* v. *Bank of England* there was a complication, as the plaintiff had been co-trustee with the forger, and in *Brewer* v. *Westminster Bank, Ltd.* [1952] 2 T.L.R. 568, McNair, J., had held that the obligation of a bank to joint executors on a joint account is a single obligation, owed to them jointly, and, accordingly, an action against the bank for unauthorised payment of moneys from that account on cheques forged by one of the executors was not maintainable by an innocent co-executor, since the misconduct of the fraudulent co-executor, who must be joined as a party to any action against the bank (whether as plaintiff or defendant), would be a bar to such an action. (Parenthetically it may here be recorded that there is an interesting note on the subsequent proceedings in this case in the Court of Appeal to be found in (1953), 69 L.Q.R. 157.)

In *Welch* v. *Bank of England*, Harman, J., distinguished *Brewer* v. *Westminster Bank, Ltd.*, on the ground that none of the cases in equity had been cited to McNair, J., in the latter case. As the stock had been standing in the plaintiff's name, although jointly with that of her co-trustee, she had a *prima facie* right in equity to have corrected on equitable terms an error in the registration of the joint holding, resulting from the forged transfers which were a nullity, without joining the transferees of the stock. Despite the duty she owed to the bank because of her relationship of customer to it, no negligence on the part of the plaintiff could disentitle her to relief unless her conduct was such as to give rise to an estoppel or amounted to a ratification of her co-trustee's

conduct, and the loss must be the direct result of the negligence. His lordship gave judgment for the plaintiff in respect of part of the claim, but disallowed her claim in part where he held on the facts that she had disentitled herself to relief in equity through her own negligence.

In so far as part of the plaintiff's claim against the Bank of England was successful, the well-established rules as to indemnity came into play, the bank claiming indemnity from the parties who had presented the forged transfers for registration.

A transferee or other person who invites a company to rely upon a forged transfer impliedly warrants it genuine and is therefore liable to indemnify the company (even if he acted innocently and without negligence) for any loss arising through the company acting on it (*Sheffield Corporation* v. *Barclay* [1905] A.C. 392), unless it can be shown that the company contributed to the loss by negligence. The sending of a transfer notice is a usual precaution, and may be some evidence to establish that the company was not negligent in registering the forged transfer, but the recipient of the transfer advice is under no legal obligation to reply thereto, and if he fails to do so he does not lose his right to assert his ownership of the shares (*Barton* v. *London & North Western Railway Company* (1889), 24 Q.B.D. 77). H.N.B.

A Conveyancer's Diary

INTERFERENCE WITH INCORPOREAL RIGHTS: TRESPASS OR CASE?

THE recent decision of the House of Lords in *Mason* v. *Clarke* [1955] 2 W.L.R. 853, and p. 278, *ante*, was the subject of comment in the "Landlord and Tenant Notebook" last week (see p. 314, *ante*). Readers will not, therefore, want any further comment from me to enable them to appreciate the vicissitudes of this long-drawn-out litigation, which, arising out of what Lord Reid called "a simple transaction of no great importance," gave the lawyers engaged in it as good a run as any of the rabbits which were the ultimate cause of all the trouble. But there is one aspect of this case which does, I think, deserve the attention of all those interested in the law relating to real property (which is not quite the same thing as what the textbook writers call the law of real property). It is this: The defendant was an agricultural tenant under a tenancy agreement which contained a reservation to his landlords of all game and rabbits and the right to kill them and carry them away. The plaintiff Mason approached the landlords and orally agreed with them to pay £100 for the rabbiting rights for a year, on an estate which included the land let to the defendant and paid the landlords this sum of £100. The plaintiff, who was an expert rabbit catcher, then began to exercise the rights he had purchased by setting snares on the land let to the defendant. The defendant, who for reasons immaterial to this aspect of the case objected to this transaction between his landlords and the plaintiff, on one occasion ordered the plaintiff off the land, on others himself killed rabbits or procured other persons to do so, and on yet others upset the snares which the plaintiff had set. In the litigation which resulted one of the points taken against the plaintiff was that he had no rights under his agreement with the landlords, on the ground that the agreement was unenforceable because there was no memorandum of it in writing. This point was dealt with by Lord Morton in his speech, when he said that if there was no writing to support the agreement, there had been acts of part performance. "Mr. Mason set snares," his lordship went on to say, "took rabbits and paid helpers, and, in my view, the work done and the expense incurred were exclusively referable to the oral agreement. Accordingly, at the relevant time Mr. Mason had a contract, specifically enforceable against [the landlords], for a grant of a *profit à prendre*, and had entered into possession thereof. In these circumstances he was clearly entitled to bring an action for trespass against the respondent. See *Holford* v. *Pritchard* (1849), 3 Ex. 793, *Fitzgerald* v. *Firbank* [1897] 2 Ch. 96."

It is this reference to trespass which in the circumstances of the case may seem startling. The plaintiff had no right, either at law or in equity, to possession of the land; that was vested in the defendant as tenant in possession under his tenancy agreement. What the plaintiff had was a right to the possession or enjoyment of a *profit à prendre*, viz., an incorporeal hereditament, and the remedy of one entitled to an incorporeal hereditament for any interference with his right to the enjoyment thereof by another person is ordinarily supposed to lie in nuisance and not in trespass. How, then, this reference to trespass?

The law on this subject is, or perhaps one should now say was, not very clear, and a full examination of it would go far beyond the scope of an article like this. The interested reader will find all, or most of, the references he wants in the notes of the arguments in the case of *Holford* v. *Bailey* (1849), 13 Q.B. 426. The plaintiff pleaded that the defendant broke and entered a several fishery in the River Usk which belonged to him, the plaintiff, and that the defendant there fished for, chased and disturbed five salmon. There was no allegation that the defendant actually took any fish. The Court of Queen's Bench was of the opinion that trespass lay for breaking and entering a several fishery, i.e., a fishery in water flowing over the land of another person, and disturbing fish there, and the Court of Exchequer Chamber upheld this view. The judgment of the latter court was delivered by Parke, B., who said of this part of the case: "We concur in the opinions intimated by [the Court of Queen's Bench] that trespass lies for breaking and entering a several fishery, though no fish are taken. There are many authorities which are referred to in the judgment of the Court of Queen's Bench [8 Q.B. 1000], and also on the argument before us, showing that an action of trespass may be maintained for fishing in a several fishery . . . It is said, however, that some of these state the taking of the plaintiffs' fish, and this would be a trespass . . . A several fishery is no doubt, *prima facie*, to be assumed to be in the soil of the defendant, and therefore *liberum tenementum* is a good plea; and the plaintiff must reply by showing a grant of a several fishery or a prescriptive right to one. It is firstly observed by Lord Denman [in his judgment in the Court of Queen's Bench in this case], that this implies that trespass will lie for breaking a several fishery when the soil is in another."

This decision was followed and applied in *Fitzgerald* v. *Firbank*, referred to by Lord Morton in this context. The claim there was for damages to a several fishery to which the plaintiffs were entitled caused by the defendant's churning up the river bottom upstream of the fishery and loading the water with mud, as a result of which the stream became opaque, the fish were driven away from the plaintiffs' fishery, and the spawning beds were damaged. There was thus no

direct interference by the defendant with the plaintiffs' property, a circumstance which usually makes it impossible for the plaintiff to sue in trespass and restricts him to the, in some ways, more difficult action of nuisance. Nevertheless, the Court of Appeal, in upholding the decision of the judge below, who had awarded damages to the plaintiffs and had founded his decision on trespass, held that the plaintiffs were entitled to bring an action in trespass. Lindley, L.J., after saying that the plaintiffs had a *profit à prendre*, went on to say that this right " is of such a nature that a person who enjoys that right has such possessory rights that he can bring an action for trespass at common law for the infringement of those rights," and he cited *Holford* v. *Bailey* for this proposition ([1897] 2 Ch., at p. 101).

The latest decision directly on this point is *Nicholls* v. *Ely Beet Sugar Factory, Ltd.* [1936] Ch. 343, another decision of the Court of Appeal. The facts were in all essentials identical with those in *Fitzgerald* v. *Firbank*. Lord Wright, M.R., who delivered the leading judgment, took a slightly different view of the law from that taken by the Court of Exchequer Chamber in *Holford* v. *Bailey* (which, curiously enough, was not referred to in this case). After mentioning the early case of *Child* v. *Greenhill* (1639), 4 Cro. Car. 553, where it had been held that trespass lay for breaking and fishing in a several fishery, he said: " There the action was in trespass both to the chose and to the actual fish that were taken, but in the case of an incorporeal hereditament, though the action may be in trespass to the fish actually taken out or destroyed by wrongful acts, there cannot be in the strict sense of the term a trespass to the incorporeal hereditament, but there may be an action in the nature of trespass." And later in his judgment Lord Wright referred to a passage from Pollock on Torts (13th ed., p. 391), to the effect that disturbance of easements and the like, as completely existing rights of enjoyment, is a wrong in the nature of trespass: " The action was on the case under the old form of pleading, since trespass was technically impossible, though the act of disturbance might happen to include a distinct trespass of some kind, for which trespass would lie at the plaintiff's option." *Holford* v. *Bailey* is not mentioned in this passage in Sir Frederick Pollock's book, but a little later the learned author does mention it, and says of it that, on its authority, trespass has always been the remedy for an invasion of an exclusive right of easement or the like. It was an exclusive right which was invaded in *Nicholls'* case, and it would seem, therefore, that even on the authority that he cited, Lord Wright was overcautious in his view that interference with a profit, if the defendant does not take anything, constitutes a wrong in the nature of trespass: it may constitute trespass *simpliciter*.

Doubtless Lord Morton remembered *Nicholls'* case, for he appeared for the defendants in that case. As to his own choice of authority for the view that the plaintiff in *Mason* v. *Clarke* was entitled to sue in trespass, *Fitzgerald* v. *Firbank* was entirely apposite; but it would seem that the reference to *Holford* v. *Pritchard* was perhaps a slip for *Holford* v. *Bailey*. *Holford* v. *Pritchard* was indeed a case about a several fishery (it may be that the plaintiff was the same person in both cases); but the point at issue in *Holford* v. *Pritchard* was whether an action lay for a sum of money for use and occupation of a *profit à prendre*, which was not material to anything in *Mason* v. *Clarke*. The conclusion that one may draw from this case, therefore, is that any interference with a profit constitutes trespass. (The acts of interference in *Mason* v. *Clarke* included the upsetting of snares belonging to the plaintiff, which would, of course, have constituted a trespass in regard to the snares; but the various acts were not differentiated, and nothing can, therefore, be said to turn on any distinction of this kind.) On this footing interference with the enjoyment of an incorporeal right entitles the owner of the right to bring an action for an injunction on proof of the interference, without proof of damage. This may perhaps have been the position as Lord Wright saw it in *Nicholls'* case, but there was always the possibility that some distinction might be drawn between an action in trespass and an action in the nature of trespass, or between interference with rights enjoyed in severalty and rights (as many easements are) enjoyed in common with others. This possibility has, I think, now been removed by the clear statement in *Mason* v. *Clarke*.

" A B C "

Landlord and Tenant Notebook

SECURITY OF TENURE OF ALTERNATIVE ACCOMMODATION

IRONICAL situations are a regular by-product of rent control; and one of the first effects of the Housing Repairs and Rents Act, 1954, s. 35, designed to improve the lot of the landlord, has been to thwart one member of that class. For in *Scrace* v. *Windust* [1955] 1 W.L.R. 475 (C.A.); *ante*, p. 290, it was the enactment of this section among " other amendments of Rent Acts " which prevented the plaintiff landlord from obtaining possession on the ground that suitable alternative accommodation would be available for the tenant when the order or judgment took effect (Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1) (*b*)).

A landlord able to invoke that ground is, normally, in a fortunate position: *Cumming* v. *Danson* (1942), 112 L.J.K.B 145 (C.A.), can be quoted to show that the burden of proving that it is reasonable to make the order is comparatively light, and there can be no nonsense about suspended or conditional orders. The notion that what is said to be available must resemble or be as good as what is claimed is a popular but fallacious one (see Asquith, L.J.'s observations in *Warren* v. *Austen* [1947] 2 All E.R. 185 (C.A.)) and it has long been established that the alternative accommodation may be part of the premises sought to be recovered (*Thompson* v. *Rolls* [1926] 2 K.B. 426).

And in *Scrace* v. *Windust* what the plaintiff landlord had proposed was that the tenant should give up two of the three ground floor rooms of the demised house, which was a two-storeyed, six-roomed one. Of the three bedrooms on the upper floor one would be converted into a kitchen. A partition would be made in the hall which would partition off the stairs, and new doors were to be made on the ground floor, so that the tenant would, when all was done, have a self-contained four-roomed dwelling. The landlord would thus obtain accommodation consisting of one living-room, a kitchen, and a coal cellar. She offered the tenant a weekly tenancy of the rest.

The tenant raised various objections, but the one that mattered was that the premises were not to be let " on terms which would, in the opinion of the court, afford to the tenant

security of tenure reasonably equivalent to the security afforded by the principal Acts in the case of a dwelling-house to which those Acts applied" (Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (3) (*b*)), and this because by the Housing Repairs and Rents Act, 1954, s. 35 (1) (which had come into force some 3½ months before the hearing), the Act of 1920 had ceased to apply to a dwelling-house which was "separate and self-contained premises produced by conversion, after the commencement of this Act, of other premises. . . ."

The learned county court judge held that the plaintiff landlord had offered or was offering suitable alternative accommodation. It is not quite clear how, if I may use such an expression, the plaintiff "got round" the point mentioned; of those authorities cited in argument before the Court of Appeal (but not in the judgment there delivered) the only one pertinent to this matter appears to be *Selwyn* v. *Hamill* [1948] 1 All E.R. 70 (C.A.), which may have been used to counter a proposition that a finding of suitability will not be disturbed: it was held that it could, and in effect would, be disturbed if in law there was no evidence to support it, etc. This would dispose of a contention based on the words "in the opinion of the court" and, possibly, also of one urging that the provision in s. 3 of the 1933 Act containing those words does not actually prescribe security of tenure as an essential ingredient of suitability. What it says is ". . . accommodation shall be deemed to be suitable if it consists of . . ." not that accommodation shall not be deemed to be suitable if it does not consist of, etc.

However, while most litigation to which the provision has given rise has turned on the other requirements or desiderata—proximity to place of work, suitability to means and to any needs (tenant and family) as regards extent and character—landlords have come across this stumbling block of insecurity of tenure before. A monthly tenancy of premises outside the Acts (the reason is not clear) was held to fall short of the security of tenure requirement in *Burt* v. *Wilson* [1932] E.G.D. 181. One of the consequences of *Neale* v. *Del Soto* [1945] K.B. 144 (C.A.), deciding that "shared" accommodation would not constitute a "separate" dwelling and would thus be unprotected (see now the Landlord and Tenant (Rent Control) Act, 1949, ss. 7, 8; but also *Parsner* v. *Goodrich, The Times*, 28th April, 1955), was that an order made by a county court judge by which a defendant was to give possession of a house "subject to the plaintiff allowing the defendant a Rent Act protected tenancy of the two front rooms, together with joint use of kitchen and out-offices" was held *ultra vires* in *Sharpe* v. *Nicholls* [1945] K.B. 382 (C.A.).

But Jenkins, L.J., delivering the judgment of the Court of Appeal, did not find it necessary to refer to any authority when holding that an unprotected weekly tenancy of part of the house would not constitute suitable alternative accommodation. The learned lord justice did, however, throw out the suggestion: "If in the present case the landlord were to offer the same alternative accommodation to the tenant, but for a term of years instead of only on a weekly tenancy, she might be able to satisfy the county court judge that the security of tenure provided in respect of alternative accommodation was reasonably equivalent to the security provided by the Rent Acts."

She might: the *dictum* is not only *obiter*, but expressed in the subjunctive mood. And "a" term of years, while it gives us an idea, does not take us very far. The concluding provision of the first rent control Act—the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915—ran: "This Act shall continue in force during the continuance of the present war and for a period of six months thereafter and no longer . . ."; later, a system of annual renewal was resorted to (and was, indeed, in vogue when *Burt* v. *Wilson*, *supra*, was decided); but by now it is clear that, despite the obvious intention that the 1954 Act shall be the beginning of the end, it would be extremely rash to speculate on the probable duration of control.

Perhaps another judicial *obiter* suggestion might prove helpful. In *Great Northern Railway Co.* v. *Arnold* (1916), 33 T.L.R. 114, Rowlatt, J., who took a poor view of the plaintiff company's attempt to get rid of a tenant on the strength of the fact that the term "for the period of the war" was uncertain, pointed out that the result could be achieved by a grant for 999 years with an option to determine on the war ceasing. The fact that *Lace* v. *Chantler* [1944] K.B. 368 has demonstrated that Rowlatt, J.'s actual decision was unsound does not matter for present purposes; nor is it necessary to consider that, while his estimate of the duration of the First World War proved reliable, any assumption that control would end with that war was ill-founded. Combining the suggestion mentioned with that of Jenkins, L.J., it would seem feasible to propose, in such circumstances as those of *Scrace* v. *Windust*, a habendum for quite a long term of years plus a landlord's option to determine on the cessation of rent control. I do not deny, of course, that whether control has or has not ceased might conceivably prove to be a difficult and arguable point.

One of the other objections raised in *Scrace* v. *Windust* led to some interesting argument and further judicial suggestions. The defendant pointed out that he was retaining possession of the house and was not obliged to co-operate by allowing the plaintiff to enter and carry out the conversion. And the subsection on which she relied authorises a court to make an order if it is satisfied that suitable alternative accommodation *is* available for the tenant or *will be* available for him when the order takes effect. The alternative was added in order to dispose of *Lees* v. *Duley* [1921] W.N. 283 (accommodation would be available some six weeks after date of hearing); but "will" does not mean "can" and, as Jenkins, L.J., said, the tenant's attitude might be unreasonable, but the objection was not easy to answer, and he did not propose to attempt any decided answer. But there was the possibility that a county court judge, if satisfied that the work could be done without any degree of serious interference with the tenant, might properly disregard the objection and find that the accommodation would be available because the plaintiff was willing and able to do it, the only obstacle being the tenant himself. Alternatively, the landlord might evolve a scheme under which temporary accommodation was provided elsewhere, leaving the dwelling-house free for the proposed conversion operation.

While, with respect, the first of the two suggestions may not, as barely stated, appear to meet the objection in a very convincing manner, I submit that if *Tideway Investment and Property Holdings Co., Ltd.* v. *Wellwood* [1952] Ch. 791 (C.A.) be sound law, the suggestion could be so developed as to harmonise with such. For in that case an order (a conditional order for possession) was made which in effect sanctioned and authorised the continuance of trespass committed by tenants (see 96 SOL. J. 556): it is pertinent to observe that Jenkins, L.J., described the trespass as technical and one which in justice would be met by an award of purely nominal damages (also that Evershed, M.R., characterised the arrangement approved as a "scheme"). If rent control legislation enables the courts to modify landlords' proprietary rights to meet unusual situations, there seems no reason why those of tenants should not be subjected to a similar process.

R. B.

HERE AND THERE

REPRISE FROM THE 'TWENTIES

FEW know more about time and his ever-rolling stream than the writer for a weekly journal. What is little-known forecast when he writes it may be stale news by the date of publication. It happened last week, for when I wrote on Tuesday morning of the matrimonial complications that have beset the Marquess of Bath there seemed to be a prospect of their being fairly easily tidied up. By Thursday the matter was *res judicata* (subject to an appeal), heard, determined and resolved judicially but by no means solved from the point of view of the parties. On the finding of Lord Merriman, it was impossible to amend the petition and decrees *nisi* and absolute by substituting details of the previous secret marriage, and even if it had been possible the President was not sure that no question would have arisen about the validity of the subsequent marriages. The whole story brings into our earnest and socially conscious time a nostalgic *reprise* of the bright irresponsible nineteen-twenties when it was not heterodox to believe that life was meant to be fun. After all, the two marriage ceremonies that have caused all the trouble did belong precisely to the period of "The Boy Friend," A. P. Herbert and the "She Shanties." They are a pleasant reassurance that people really did lead lives, sometimes, like the characters in contemporary musical comedies—titled romance, young love, parental opposition, secret marriages, separation, exile in America, return, opposition melted, official engagement, fashionable wedding, curtain. What has happened now has all the material for a clever modern play including (if one may say so respectfully) a very good trial scene. There is an ironic touch in that the ceremony which neither of the parties thought worth mentioning in the divorce court should have come to light so casually in a book of reminiscences. No doubt to a lawyer its importance would have been obvious enough but, if one puts one's legal mind on the shelf for a moment, it is easy to see that for ordinary people the second ceremony was the official ceremony and the only one with which the official transactions in the Divorce Court were concerned.

COLLECTING MARRIAGE CEREMONIES

EVEN with this interesting example to reflect upon, it is doubtful whether solicitors instructed to institute divorce proceedings will always remember to ask every client: "How many ceremonies of marriage did you go through with your spouse and which was the first?" Collecting marriage ceremonies is, on the whole, almost of necessity a luxury for wealthier couples. So far as I know, no one has done better in that line than Miss Penelope Smyth, a young lady of good family and large fortune from County Cork. While travelling abroad in the eighteen-thirties she met Charles Ferdinand Bourbon, Prince of Capua, and married him in Rome. (She had always said she would marry no one but a prince, rightly so, for she had a regal Irish beauty.) Later they went through another ceremony in Madrid, and another at Gretna Hall. Still apparently feeling that security could be made yet surer they came south to London and applied for a marriage licence at Doctors' Commons. This was blocked by a caveat entered by the Neapolitan Ambassador on behalf of the King of Naples, the core of the family opposition to the match, which was at the back of all this tying and retying of the knot. Finally, the couple were married at St. George's, Hanover Square, in the face of a last desperate attempt by the ambassador to forbid the banns. Had the lady been polygamously inclined, she need never have stopped adding weddings to her collection, for thirteen rejected suitors attended the ceremony at St. George's.

DANGERS BETWEEN DECREES

WISE solicitors, even if they sometimes omit to inquire about a possible multiplicity of marriage ceremonies, had better be very wary about the perils that lurk in the no-man's-land between decree *nisi* and decree absolute. In the reminiscences of Edward Crispe, a Victorian-Edwardian "silk," there is a not unentertaining warning of what may happen by taking too much for granted. He had obtained a decree *nisi* for a gentleman who was so anxious to reassume the bonds of matrimony that he made arrangements to remarry on the very day that the decree was to be made absolute. Confident that, according to established practice, all the decrees would be dealt with first thing in the morning as a mere formality, he fixed his wedding for one o'clock, despite the warnings of his legal advisers that he was running things rather too close for safety. By 1.30 p.m. the deed was done. Meanwhile, just after the luncheon adjournment, one of the clerks of his solicitors happened to be in court and heard the decree absolute list then being read out. Not only that, but when their client's case was reached counsel rose to intervene on behalf of the Queen's Proctor. The divorced wife had trumped up some charges of impropriety between her husband and his new bride. They proved altogether groundless but the effect was more remarkable than the rancorous lady could have foreseen. As Crispe put it, "instead of the health of bride and bridegroom being proposed at the wedding breakfast, the guests had to console with two interesting young bigamists." But in the end everything finished happily. Something like the converse of this case came before Humphreys, J., not many years ago at the Leeds Assizes when a lady sued her solicitor for having failed to take her instructions before having a decree *nisi* granted to her made absolute. That time the trouble was that she had become reconciled to her former husband and resumed cohabitation, not realising until four years later that they were not married any more. Marriage can bring solicitors almost as many troubles as their clients.

RICHARD ROE.

BOOKS RECEIVED

The Complete Valuation Practice. Fourth Edition. By N. E. MUSTOE, Q.C., M.A., LL.B., H. BRIAN EVE, F.R.I.C.S., Chartered Surveyor, Past President of the Rating Surveyors' Association, and BRYAN ANSTEY, B.Sc. (Estate Management), F.R.I.C.S., F.A.I., F.I.A.S., Chartered Surveyor, Chartered Auctioneer and Estate Agent. 1955. pp. xix and (with Index) 395. London: The Estates Gazette, Ltd. £2 net.

"Current Law" Income Tax Acts Service. [CLITAS.] Release 24, 21st April, 1955, The Budget. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd.

Topham's Company Law. Twelfth Edition. By JOHN MONTGOMERIE, B.A., of Lincoln's Inn, Barrister-at-Law, and SEFTON D. TEMKIN, M.A., LL.B., of Gray's Inn and the Northern Circuit, Barrister-at-Law. With a chapter on Companies in Scotland by DAVID M. WALKER, M.A., LL.B., Ph.D., Advocate of the Scottish Bar, Professor of Jurisprudence in the University of Glasgow. 1955. pp. lxxxvi, 459 and (Index) 55. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 17s. 6d. net.

No Bail for the Judge. By HENRY CECIL. 1955. pp. 156. London: Pan Books, Ltd. 2s. net.

Applications for Planning Payments. By A. E. TELLING, M.A., of the Inner Temple, Barrister-at-Law, and F. H. B. LAYFIELD, A.M.T.P.I., of Gray's Inn and the Western Circuit, Barrister-at-Law. 1955. pp. 20 and (with Index) 313. London: Butterworth & Co. (Publishers), Ltd. £1 18s. 6d. net.

Estate Duty and Private Companies. By A. R. ILERSIC, M.Sc. (Econ.), B.Com. 1955. pp. 26. London: The Incorporated Accountants' Research Committee. 4s. net.

Landlord and Tenant Act, 1954. By T. J. SOPHIAN, of the Inner Temple and South-Eastern Circuit, Barrister-at-Law. 1955. pp. (with Index) 310. London: Staples Press, Ltd. £1 10s. net.

Byles on Bills of Exchange. Twenty-first Edition. By MAURICE MEGRAH, of Gray's Inn, Barrister-at-Law, Secretary to the Institute of Bankers. 1955. pp. lxxvii and (with Index) 439. London: Sweet & Maxwell, Ltd. £3 3s. net.

TALKING "SHOP"

PLAIN TALES FROM THE SHELVES—IX

THE EARL OF ESSEX

ON 19th February, 1600, at Westminster Hall, the Earl of Essex and the Earl of Southampton (Shakespeare's patron) were arraigned for trial by their peers upon charges of high treason before a court over which there presided the Lord High Steward, Thomas Sackville, later first Earl of Dorset and Baron Buckhurst. The interventions of "my lord Steward" in the trial were few and far between, and one is left with the impression of a laconic and self-effacing president. In his charge to the assembled peers he—

> seemed rather to excuse his sparinge of speeche than purpose to speake muche, for though he should have used manie wordes to them, he sayd yet . . . all should have been to declare the occasion of their meetinge and to admonishe them of the waightines of the cause they hadd in hand.

And on a question arising, whether the Attorney-General should conclude the case for the Crown in one piece—to which Essex objected, because this method would "troble the weak memories" of the two prisoners—Sackville first ruled for the Attorney-General and then submitted to be overruled in his turn by the Lord Chief Justice. He is perhaps better known to posterity for his poetry and his diplomacy and his building operations in Kent, but for such matters I must refer the reader to Lady Nicolson's book on Knole and the Sackvilles.

The judiciary were represented by the Lord Chief Justice (Popham), Chief Justice Anderson and the Lord Chief Baron (Sir William Periam); Baron Clarke and Justices Gawdy, Fenner, Walmesley and Kingsmill. The Attorney-General was Sir Edward Coke, as at the trial of Sir Walter Raleigh (see the sixth of this series). Mr. Attorney, as usual, could not restrain himself from sarcasms and vituperation, but he was matched this time with a less formidable opponent in Essex, and did not so much overreach himself as he did at the trial of Sir Walter. "With" Coke was Mr. Solicitor Bacon; though, indeed, Coke was for the most part so inept and Bacon was so formidable that it would be nearer the mark to say that Coke was "with" Bacon.

The two Earls were charged with what one might call in these days (if it were not a contradiction in terms) an unsuccessful *coup d'état*. In the more stately language of the Elizabethan indictment:—

> Thou Robert Erle of Essex and thou Henry Erle of Sowthampton stand indited of Highe Treason in that you contrary to your allegiance and fidellitie onto our Soveraigne Lady Queene Elizabeth, etc., not havinge the feare of God before your eyes and thereonto moved by the instigacion of the devill, didd uppon the eight day of ffebruarie, in the 43 yeare of the Raigne of our said soveraigne Lady the Queene wickedlie imadgine, devise and compasse to take her Maiesties person and deprive her of her throne and dignitie, and to take awaye the life of her sacredd Maiestie and in her Kyngdom Rebellion and sedition to raise, and thou the said Erle of Essex to exalt thyself and usurpe the Crowne, to alter and chaunge the present state of government and Religion . . .

Such was the gravamen of the charge, and the indictment then went on to specify the overt acts upon which the prosecution relied, which really amounted to this—that the accused had detained in custody and threatened (amongst others) the lives of three of the Queen's principal officers of State, namely, the Lord Keeper of the Great Seal, the Lord Chief Justice, and the Controller of Her Majesty's Household; and had attempted *vi et armis* to surprise the Court and Tower of London and so possess themselves of the City of London and of the reins of government. But in truth it is an unenviable task to attempt to separate these overt acts from the many charges of *mens rea;* all are tangled together in the indictment. Putting it as simply as possible, the prisoners were charged with the high treason of an armed insurrection against established authority. Of their guilt Mr. Attorney affected to entertain no doubt at all:—

> Heere he shewed the Lord of Essex what great cause he hadd to carrie himself gratefullie and dutifullie to her Maiestie, having receaved so many high advauncements and bountifull guiftes from her, But contrary wise tourninge all her favours to a rebellious hand, the Erle had conspired in as great a conspiracy as Cattalyne [Cataline], gatheringe all kinde of people onto him like Cattalyne, especiallie discontented persons as Atheystes, papistes etc., to possess London, as Cattalyne didd Rome; the difference was Cattalyne had manie followed him in Rome, and London afforded none to follow the Erle, thoughe he sought to creepe into the Commons favours and to make himself the peoples minion. Ambition he shewed so possessed him that he could never be satisfied, the more favours and honours he hadd, the more still he coveted, and this humor increased in him, as they saye of the Crocodill that he groweth still till his death.

And after the tedious manner of Counsel, so familiar to us even in these days, Mr. Attorney could not leave it at that, but had to build up the whole structure again from footings to roof-tree in this truly artistic manner:—

> But my lord of Essex intended to take by powerfull hand not onlie a towne, but a cittie, not a cittie alone but London, the cheef cittie, and not onlie London, but the Tower of London the strenght of the Realme; and not onlie the Tower of London, but the Royall pallace and person of the prynce, and take awaye her life, this is against the lawe of nature, and is to be counted amongst the cryinge sinnes. *Res ipsa loquitur.*

Res ipsa loquitur or no, there was not a scrap of evidence to prove that Essex and his faction had any design to kill the Queen, though it was more or less admitted that they purposed to remove her counsellors from about her.

From these rhythmic periods of Mr. Attorney there suddenly flashes out, as from a lighthouse, one of those blinding rays

whereby one age betrays itself to another. For one moment all stands starkly in silhouette—the cloud-wrack, the foaming seas, the jagged rocks—and as suddenly all is eclipsed :—

> Nowe for the mannere and custome of this treason he woulde showe howe wonderfullie it was discovered, and they in all their plottes revealed, *not one man being racked or offered to the torture.*

And so by degrees Mr. Attorney came to his evidence, but not without observing, after his usual scalding manner, that " by Gode's Judgment he that thoghte to have been [i.e., aspired to be] Kinge of England Robert the first is like to be now Erle of Essex Robert the last."

The evidence, as such, is not perhaps of any great interest, for the facts were never in doubt, but one can scarcely fail to be impressed by the spectacle of a Lord Chief Justice, the senior judicial member of a court, rising in his place to testify to most material facts in the case. (Howell, I must allow, makes it appear that the Lord Chief Justice and the Lord Keeper put in a sworn statement, but I prefer the more dramatic version of the Helmingham MS.* and it makes little difference either way.) The diligent reader will not have failed to note that Popham, L.C.J., was a material witness because he was one of the distinguished company sent by the Queen to admonish and restrain Essex, whom Essex placed under an armed guard. Hence Popham's evidence, given by the wish of the court " at large," which, I suppose, means without submitting him to the indignity of question and answer. This was to the following effect, with small regard, as may be seen, for any rules of hearsay :—

> Then the Lord Cheef Justice rose upp and being sworne begann to speake, the whole Court wishinge his Lordship to speake the whole truth at large. He reported howe the Lord Keeper deliveringe the Message from the Queene to disperse that Riottous companie and submitt himself to her Maiesties Commandement, the Earl refused so to doe and carried them into a room apart, as though he would have spoken with them in private, but there he left them and the dore was shutt upon them. He told further that lookinge thorough the dore he sawe some stand with muskattes readdie bent and matches on light at the dore. He told of manie insolent speeches as some would saye, Kill them, Kill them we shall have the lesse to doe, they will betray us by delayinge us . . . Afterwardes my Lord being longe from them, the Lord Cheef Justice asked a gentleman what was become of the Earl of Essex. Aunswere was made [*hearsay?*] he was gonn into the Cittie, the Lord Cheef Justice replied he hoped he should have little succour there, for he doubted not her Maiestie had faithfull subiectes there ; thus they contynewed in feare and daunger till Sir Fardinando Gorge [Sir Ferdinando Gorges] freed them.

During the whole trial Essex made little or no attempt to defend himself (except in matters touching his religious faith, to which I will revert) ; and one may take the view that he was in his own eyes a condemned man, or else—if one be drawn to the romantic story of the ring—that he was relying upon the Queen's reprieve. There were but few clashes such as showered sparks at the trial of Sir Walter Raleigh, but to the credit of Essex is one rejoinder to Mr. Attorney which Sir Walter at his own trial was later to borrow and embroider in his own inimitable way :—

> Heere Mr. Attorney urged the Erle of Essex [i.e., charged him with] his owne speeches in the Cittie and the slight regard of the Herald. The Erles aunswere was, he often [heard] the Queene's name mencioned, but sawe no other signe of auctoritie, savinge a heraldes coate on the backe of a fellowe that he been burned in the hand [usually the sign of a felon who had pleaded his benefit of clergy, as did Ben Jonson] and was knowen to be a notable knave and therefore was the lesse willinge to heare him, to which speeche it was replied, Whatsoever he weare yf he weare the Queene's Officer he ought to have benn obayed. And the Attorney further urginge what little assistance he [i.e., Essex] hadd of the citizens . . . used this phrase, there was never povertie cladd in suche pride. Whereat the Erle of Essex, disdainfullie smilinge and shakinge his hedd, said, *Pride, Mr. Attorney, look to yourself.*

At other times the trial degenerated to bathos, as when Secretary Cecil (in truth the destroyer of both Essex and Raleigh) was charged by Essex with loose talk to Sir William Knollys (or Knowles), the Controller of the Queen's Household, of the rightful succession to the throne being vested in the Infanta of Spain. Cecil thereupon threw himself on his knees, declaring that if the Queen should decline his humble petition that she be pleased to send Knollys to testify at the trial, he (Cecil) would " never serve her in the place of Counsellor more." This, of course, was all in keeping with the duplicity of Cecil—to show a respect for the Court which he probably did not feel, and a masterful way with the sovereign under cover of a feigned humility. Whether it was this exhibition or something else that caused the attention of Essex momentarily to wander, he is found shortly afterwards addressing, or seeming to address, Mr. Secretary as " My Lord," to which Cecil replies : " Noe *' my Lord '* ; I am noe *Lord* but a poore gentleman and servant to her Maiestie." Such hypocrisy was too much for Essex, who retorted witheringly : " But you are above a Lord ? " He, too, had known what it was to be above a Lord.

It must also be allowed that here and there there is an unmistakable flavour of Daisy Ashford, as when Bacon was questioning Essex :—

> Well, my Lord (replied Mr. Bacon), I have spent more howers in vaine in the studie howe to make you a good servant to Her Maiestie and the State than I have done in anie thinge else.
>
> Whoe I Mr. Bacon ? a good subject ? by *your* studie ! (said the Erle of Essex with a scornful countenance).

And by the same token and in the same vein, Lord Grey and the Earl of Southampton had a little exchange which would have fitted neatly into the *Young Visiters* :—

> Whilest I contynewed in the Neither Landes [Netherlands] I was content . . . to lyve peasablie with you, and so I returned into England offeringe nothinge to you until you gave me newe occasion. Then Southampton said not I my Lord. Lord Grey replied, upon my salvacion you didd. Uppon my salvacion said the Erle of Southampton, I didd not ; then I was misinformed, said Lord Grey. Then so you weare, said the Erle of Southampton.

There were also inexplicable fussations, as when Sir Walter Raleigh desired to give evidence upon the vexed question of his meeting with Sir Ferdinando Gorges upon the water (a historical incident for which there is no space here), and was ready to be sworn :—

> When vehementlie the Lord of Essex cried out Looke what booke it is he sweares on ; and the booke being in

* The property of the Tollemache family, first published by Gerald Duckworth & Co., Ltd., in Vol. III of H. L. Stephen's State Trials. All the other quotations in this article are also from the Helmingham MS. by kind permission of Lord Tollemache and Gerald Duckworth & Co Ltd.

Applications for Planning Payments. By A. E. TELLING, M.A., of the Inner Temple, Barrister-at-Law, and F. H. B. LAYFIELD, A.M.T.P.I., of Gray's Inn and the Western Circuit, Barrister-at-Law. 1955. pp. 20 and (with Index) 313. London: Butterworth & Co. (Publishers), Ltd. £1 18s. 6d. net.

Estate Duty and Private Companies. By A. R. ILERSIC, M.Sc. (Econ.), B.Com. 1955. pp. 26. London: The Incorporated Accountants' Research Committee. 4s. net.

Landlord and Tenant Act, 1954. By T. J. SOPHIAN, of the Inner Temple and South-Eastern Circuit, Barrister-at-Law. 1955. pp. (with Index) 310. London: Staples Press, Ltd. £1 10s. net.

Byles on Bills of Exchange. Twenty-first Edition. By MAURICE MEGRAH, of Gray's Inn, Barrister-at-Law, Secretary to the Institute of Bankers. 1955. pp. lxxvii and (with Index) 439. London: Sweet & Maxwell, Ltd. £3 3s. net.

TALKING "SHOP"

PLAIN TALES FROM THE SHELVES—IX

THE EARL OF ESSEX

ON 19th February, 1600, at Westminster Hall, the Earl of Essex and the Earl of Southampton (Shakespeare's patron) were arraigned for trial by their peers upon charges of high treason before a court over which there presided the Lord High Steward, Thomas Sackville, later first Earl of Dorset and Baron Buckhurst. The interventions of "my lord Steward" in the trial were few and far between, and one is left with the impression of a laconic and self-effacing president. In his charge to the assembled peers he—

> seemed rather to excuse his sparinge of speeche than purpose to speake muche, for though he should have used manie wordes to them, he sayd yet . . . all should have been to declare the occasion of their meetinge and to admonishe them of the waightines of the cause they hadd in hand.

And on a question arising, whether the Attorney-General should conclude the case for the Crown in one piece—to which Essex objected, because this method would "troble the weak memories" of the two prisoners—Sackville first ruled for the Attorney-General and then submitted to be overruled in his turn by the Lord Chief Justice. He is perhaps better known to posterity for his poetry and his diplomacy and his building operations in Kent, but for such matters I must refer the reader to Lady Nicolson's book on Knole and the Sackvilles.

The judiciary were represented by the Lord Chief Justice (Popham), Chief Justice Anderson and the Lord Chief Baron (Sir William Periam); Baron Clarke and Justices Gawdy, Fenner, Walmesley and Kingsmill. The Attorney-General was Sir Edward Coke, as at the trial of Sir Walter Raleigh (see the sixth of this series). Mr. Attorney, as usual, could not restrain himself from sarcasms and vituperation, but he was matched this time with a less formidable opponent in Essex, and did not so much overreach himself as he did at the trial of Sir Walter. "With" Coke was Mr. Solicitor Bacon; though, indeed, Coke was for the most part so inept and Bacon was so formidable that it would be nearer the mark to say that Coke was "with" Bacon.

The two Earls were charged with what one might call in these days (if it were not a contradiction in terms) an unsuccessful *coup d'état*. In the more stately language of the Elizabethan indictment:—

> Thou Robert Erle of Essex and thou Henry Erle of Sowthampton stand indited of Highe Treason in that you contrary to your allegiance and fidellitie onto our Soveraigne Lady Queene Elizabeth, etc., not havinge the feare of God before your eyes and thereonto moved by the instigacion of the devill, didd uppon the eight day of ffebruarie, in the 43 yeare of the Raigne of our said soveraigne Lady the Queene wickedlie imadgine, devise and compasse to take her Maiesties person and deprive her of her throne and dignitie, and to take awaye the life of her sacredd Maiestie and in her Kyngdom Rebellion and sedition to raise, and thou the said Erle of Essex to exalt thyself and usurpe the Crowne, to alter and chaunge the present state of government and Religion . . .

Such was the gravamen of the charge, and the indictment then went on to specify the overt acts upon which the prosecution relied, which really amounted to this—that the accused had detained in custody and threatened (amongst others) the lives of three of the Queen's principal officers of State, namely, the Lord Keeper of the Great Seal, the Lord Chief Justice, and the Controller of Her Majesty's Household; and had attempted *vi et armis* to surprise the Court and Tower of London and so possess themselves of the City of London and of the reins of government. But in truth it is an unenviable task to attempt to separate these overt acts from the many charges of *mens rea;* all are tangled together in the indictment. Putting it as simply as possible, the prisoners were charged with the high treason of an armed insurrection against established authority. Of their guilt Mr. Attorney affected to entertain no doubt at all:—

> Heere he shewed the Lord of Essex what great cause he hadd to carrie himself gratefullie and dutifullie to her Maiestie, having receaved so many high advauncements and bountifull guiftes from her, But contrary wise tourninge all her favours to a rebellious hand, the Erle had conspired in as great a conspiracy as Cattalyne [Cataline], gatheringe all kinde of people onto him like Cattalyne, especiallie discontented persons as Atheystes, papistes etc., to possess London, as Cattalyne didd Rome; the difference was Cattalyne had manie followed him in Rome, and London afforded none to follow the Erle, thoughe he sought to creepe into the Commons favours and to make himself the peoples minjon. Ambition he shewed so possessed him that he could never be satisfied, the more favours and honours he hadd, the more still he coveted, and this humor increased in him, as they saye of the Crocodill that he groweth still till his death.

And after the tedious manner of Counsel, so familiar to us even in these days, Mr. Attorney could not leave it at that, but had to build up the whole structure again from footings to roof-tree in this truly artistic manner:—

> But my lord of Essex intended to take by powerfull hand not onlie a towne, but a cittie, not a cittie alone but London, the cheef cittie, and not onlie London, but the Tower of London the strenght of the Realme; and not onlie the Tower of London, but the Royall pallace and person of the prynce, and take awaye her life, this is against the lawe of nature, and is to be counted amongst the cryinge sinnes. *Res ipsa loquitur.*

Res ipsa loquitur or no, there was not a scrap of evidence to prove that Essex and his faction had any design to kill the Queen, though it was more or less admitted that they purposed to remove her counsellors from about her.

From these rhythmic periods of Mr. Attorney there suddenly flashes out, as from a lighthouse, one of those blinding rays

whereby one age betrays itself to another. For one moment all stands starkly in silhouette—the cloud-wrack, the foaming seas, the jagged rocks—and as suddenly all is eclipsed :—

> Nowe for the mannere and custome of this treason he woulde showe howe wonderfullie it was discovered, and they in all their plottes revealed, *not one man being racked or offered to the torture.*

And so by degrees Mr. Attorney came to his evidence, but not without observing, after his usual scalding manner, that " by Gode's Judgment he that thoghte to have been [i.e., aspired to be] Kinge of England Robert the first is like to be now Erle of Essex Robert the last."

The evidence, as such, is not perhaps of any great interest, for the facts were never in doubt, but one can scarcely fail to be impressed by the spectacle of a Lord Chief Justice, the senior judicial member of a court, rising in his place to testify to most material facts in the case. (Howell, I must allow, makes it appear that the Lord Chief Justice and the Lord Keeper put in a sworn statement, but I prefer the more dramatic version of the Helmingham MS.* and it makes little difference either way.) The diligent reader will not have failed to note that Popham, L.C.J., was a material witness because he was one of the distinguished company sent by the Queen to admonish and restrain Essex, whom Essex placed under an armed guard. Hence Popham's evidence, given by the wish of the court " at large," which, I suppose, means without submitting him to the indignity of question and answer. This was to the following effect, with small regard, as may be seen, for any rules of hearsay :—

> Then the Lord Cheef Justice rose upp and being sworne begann to speake, the whole Court wishinge his Lordship to speake the whole truth at large. He reported howe the Lord Keeper deliveringe the Message from the Queene to disperse that Riottous companie and submitt himself to her Maiesties Commandement, the Earl refused so to doe and carried them into a room apart, as though he would have spoken with them in private, but there he left them and the dore was shutt upon them. He told further that lookinge thorough the dore he sawe some stand with muskattes readdie bent and matches on light at the dore. He told of manie insolent speeches as some would saye, Kill them, Kill them we shall have the lesse to doe, they will betray us by delayinge us . . . Afterwardes my Lord being longe from them, the Lord Cheef Justice asked a gentleman what was become of the Earl of Essex. Aunswere was made [*hearsay?*] he was gonn into the Cittie, the Lord Cheef Justice replied he hoped he should have little succour there, for he doubted not her Maiestie had faithfull subiectes there ; thus they contynewed in feare and daunger till Sir Fardinando Gorge [Sir Ferdinando Gorges] freed them.

During the whole trial Essex made little or no attempt to defend himself (except in matters touching his religious faith, to which I will revert) ; and one may take the view that he was in his own eyes a condemned man, or else—if one be drawn to the romantic story of the ring—that he was relying upon the Queen's reprieve. There were but few clashes such as showered sparks at the trial of Sir Walter Raleigh, but to the credit of Essex is one rejoinder to Mr. Attorney which Sir Walter at his own trial was later to borrow and embroider in his own inimitable way :—

> Heere Mr. Attorney urged the Erle of Essex [i.e., charged him with] his owne speeches in the Cittie and the slight regard of the Herald. The Erles aunswere was, he often [heard] the Queene's name mencioned, but sawe no other signe of auctoritie, savinge a heraldes coate on the backe of a fellowe that he been burned in the hand [usually the sign of a felon who had pleaded his benefit of clergy, as did Ben Jonson] and was knowen to be a notable knave and therefore was the lesse willinge to heare him, to which speeche it was replied, Whatsoever he weare yf he weare the Queene's Officer he ought to have benn obayed. And the Attorney further urginge what little assistance he [i.e., Essex] hadd of the citizens . . . used this phrase, there was never povertie cladd in suche pride. Whereat the Erle of Essex, disdainfullie smilinge and shakinge his hedd, said, *Pride, Mr. Attorney, look to yourself.*

At other times the trial degenerated to bathos, as when Secretary Cecil (in truth the destroyer of both Essex and Raleigh) was charged by Essex with loose talk to Sir William Knollys (or Knowles), the Controller of the Queen's Household, of the rightful succession to the throne being vested in the Infanta of Spain. Cecil thereupon threw himself on his knees, declaring that if the Queen should decline his humble petition that she be pleased to send Knollys to testify at the trial, he (Cecil) would " never serve her in the place of Counsellor more." This, of course, was all in keeping with the duplicity of Cecil—to show a respect for the Court which he probably did not feel, and a masterful way with the sovereign under cover of a feigned humility. Whether it was this exhibition or something else that caused the attention of Essex momentarily to wander, he is found shortly afterwards addressing, or seeming to address, Mr. Secretary as " My Lord," to which Cecil replies : " Noe ' *my Lord* ' ; I am noe *Lord* but a poore gentleman and servant to her Maiestie." Such hypocrisy was too much for Essex, who retorted witheringly : " But you are above a Lord ? " He, too, had known what it was to be above a Lord.

It must also be allowed that here and there there is an unmistakable flavour of Daisy Ashford, as when Bacon was questioning Essex :—

> Well, my Lord (replied Mr. Bacon), I have spent more howers in vaine in the studie howe to make you a good servant to Her Maiestie and the State than I have done in anie thinge else.
>
> Whoe I Mr. Bacon ? a good subject ? by *your* studie ! (said the Erle of Essex with a scornful countenance).

And by the same token and in the same vein, Lord Grey and the Earl of Southampton had a little exchange which would have fitted neatly into the *Young Visiters* :—

> Whilest I contynewed in the Neither Landes [Netherlands] I was content . . . to lyve peasablie with you, and so I returned into England offeringe nothinge to you until you gave me newe occasion. Then Southampton said not I my Lord. Lord Grey replied, upon my salvacion you didd. Uppon my salvacion said the Erle of Southampton, I didd not ; then I was misinformed, said Lord Grey. Then so you weare, said the Erle of Southampton.

There were also inexplicable fussations, as when Sir Walter Raleigh desired to give evidence upon the vexed question of his meeting with Sir Ferdinando Gorges upon the water (a historical incident for which there is no space here), and was ready to be sworn :—

> When vehementlie the Lord of Essex cried out Looke what booke it is he sweares on ; and the booke being in

* The property of the Tollemache family, first published by Gerald Duckworth & Co., Ltd., in Vol. III of H. L. Stephen's State Trials. All the other quotations in this article are also from the Helmingham MS. by kind permission of Lord Tollemache and Gerald Duckworth & Co Ltd.

decimo sexto, or [*sic*] the least [last ?] volume was looked in, and changed to a booke in folio of the largest size.

One can place one's own interpretation upon this, but I suspect that the reporter has missed the point. Raleigh had the unwarranted reputation of being an atheist, and there was no love lost between him and Essex, at least at this time. My notion is that Essex was not so much concerned with the size of the book as with its contents, and was hoping to discredit Raleigh by disclosing some heresy; but Raleigh, with his usual quickness of wit, worked off on Essex this piece of buffoonery with the largest volume to hand.

I have wholly failed to emphasise that sincerity was the dominant feature of the trial, nor have I made any attempt to quote from the addresses that are best worth reading, which include Essex's masterly defence of his religion, and Bacon's two interventions, so extraordinarily effective against a background of distractions and irrelevancies. Then there is the confession of Essex upon the scaffold, which prompted Raleigh, in a letter to Lord Cobham, to write: "Do not, as my lord Essex did, take heed of a preacher, for by his persuasion he confessed and made himself guilty." But had he not done so, there might have been lost to us his most moving prayer: "O Lord, I acknowledge that through mine own ignorance and dullness I cannot offer up my prayers as I ought but I desire to do it . . ."

Southampton, though convicted with Essex, and sentenced to death, had his punishment changed to imprisonment for life; but he was released in about three years' time, after the accession of James I, and his peerage was restored.

Essex was executed on Ash Wednesday, 25th February, 1600, and as history relates, the executioner did his office ill, "having an ordinary axe wherewith he strake three blows. Howbeit neither bodie, armes nor hedd ever stirred after the ffirst." Then the executioner took up his head and cried "God save the Queen."

"ESCROW"

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

EAST AFRICA: SALE OF GOODS: CONTRACT: ADMISSIBILITY IN EVIDENCE

M. Takim & Co. *v.* Velji

Lord Tucker, Lord Cohen, Lord Somervell of Harrow, Mr. L. M. D. de Silva. 19th April, 1955

Appeal from the East African Court of Appeal.

By their plaint the appellants alleged that by a contract in writing dated 20th June, 1950, they bought from the respondent 20,000 lb. of fair quality cloves at the price of 95s. per 100 lb., to be delivered between 1st and 30th November, 1950. The respondent did not deliver any of the cloves. The appellants claimed as damages 8,800s., being the difference between the contract price and the market price of cloves on 30th November, 1950. By his amended defence the respondent denied that the document of 20th June, 1950, had any legal effect; he alleged that it was a note or memorandum made by a broker and, not being duly stamped, was not admissible in evidence or enforceable in law. The document, which was headed "Local Contract Note," stated that the respondent had "sold the goods" to the appellants "through broker Mohamed Saleh Bhaloo" (who was acting for the appellants). The document then set out, *inter alia*, the description, quantity and price of the goods, and under the heading "Other Conditions" stated, *inter alia*, that "The seller and the buyer have made bargain with signature. That is all." There then followed the signature of the broker, and below that appeared: "Note—The above-mentioned goods have been sold on the conditions written above, which are acceptable to us . . .", and that note was signed by the seller and the buyers. On a claim by the appellants for damages for non-delivery of the cloves, the respondent pleaded that the document of 20th June, 1950, was a note or memorandum made by a broker within the meaning of Article 41 of the First Schedule of the Zanzibar Stamp Decree, 1940, which provided for a stamp duty of 20c. in the case of a "note or memorandum, sent by a broker or agent to his principal intimating the purchase or sale on account of such principal, (*a*) of any goods of the amount or value of 40s. or over," and that, not having been duly stamped, it was, under s. 39 of the Stamp Decree, not admissible in evidence, and accordingly unenforceable under s. 3 (1) of the Zanzibar Sale of Goods Decree, 1934, which provided that "a contract for the sale of any goods . . . shall not be enforceable by suit in any court . . . unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf." The High Court of Zanzibar gave judgment for the appellants for 8,750s., but the East African Court of Appeal reversed that decision. The buyers now appealed.

LORD SOMERVELL OF HARROW, giving the judgment, said that there was a previous decision, *Vagani & Co.* v. *Lakhani, Ltd.* (1949), 16 E.A.C.A. 5, binding on the trial judge in this case and in which a document similar in some respects to the present one had been held to be a "broker's note" within Article 41. The trial judge, however, distinguished that case and held that the present document did not intimate a purchase or sale, but was a draft of proposed terms to which the parties, by signing, could, if so minded, agree. He relied on the words which appeared just above the broker's signature: "The seller and the buyer have made bargain with signature." The Court of Appeal felt unable to distinguish *Vagani's* case, *supra*. The trial judge was clearly right in his conclusion that the document, until signed, was not an intimation by the broker of a purchase or sale. It was therefore outside Article 41, and was exempt from stamping under Article 5 (1) of the Schedule. The respondent's contention failed and he was liable for his breach of contract. Brokers might be well advised to reconsider a form of document which had given rise to the present litigation and to *Vagani's* case, *supra*. The appeal should be allowed.

APPEARANCES: *Gahan*, Q.C., and *J. G. Le Quesne* (*Bircham & Co.*); *Leonard Caplan* (*Herbert Oppenheimer, Nathan & Vandyk*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 991**

HOUSE OF LORDS

APPEAL IN MATRIMONIAL CAUSE: EDUCATION OF CHILD

B. *v.* B. (No. 2)

Viscount Kilmuir, L.C., Lord Morton of Henryton, Lord Reid, Lord Tucker and Lord Somervell of Harrow

4th and 5th April, 1955

Appeal from the Court of Appeal.

On 31st July, 1952, a wife (the appellant) obtained a decree *nisi* of divorce and was granted custody of the children of the marriage. On 12th September, 1952, the decree was made absolute. Subsequently it appeared that she intended to educate the younger child, not in the Roman Catholic faith, that of her former husband (the respondent), but as a member of the Church of England. On 6th June, 1954, the respondent applied in the divorce proceedings for directions that the child should be educated as a Roman Catholic. Davies, J., dismissed the summons. The Court of Appeal reversed his decision and refused leave to appeal. The Appeals Committee of the House of Lords subsequently granted leave to appeal. When the case came on for hearing before the Appellate Committee it was objected by the respondent that there was no jurisdiction to hear the appeal by reason of s. 27 (2) of the Supreme Court of Judicature (Consolidation) Act, 1925.

VISCOUNT KILMUIR, L.C., said that the case was covered by the subsection. No order was made as to costs.

5th April.

The House ordered that the appeal be dismissed as incompetent to be heard.*

APPEARANCES: *Simon*, Q.C., and *A. R. Ellis* (*Theodore Goddard & Co.*); *Russell*, Q.C., and *Roger Ormrod* (*Charles Russell & Co.*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[1 W.L.R. 557**

* *See also subsequent proceedings in the Court of Appeal, below.*

COURT OF APPEAL

FATAL ACCIDENTS ACTS: CLAIM BY WIDOWED MOTHER IN RESPECT OF SON'S DEATH: ASSESSMENT OF DAMAGES

Dolbey *v.* Goodwin

Lord Goddard, C.J., Hodson and Romer, L.JJ.

8th November, 1954

Appeal from Cassels, J.

The plaintiff, a widow, suing as the administratrix of her son, aged twenty-nine, claimed damages under the Fatal Accidents Acts from the defendant, in respect of the death of her son as the result of an accident while in the defendant's employment; she also claimed under the Law Reform (Miscellaneous Provisions) Act. The plaintiff's son was of a steady character, a non-drinker and a non-smoker, and was qualifying himself to take a better-paid position. From the amount he paid to his mother while he was living at home, she was getting the benefit of from £4 to £4 5s. a week at the time of his death. He was unmarried and apparently did not contemplate matrimony. Cassels, J., held that the plaintiff was entitled to recover damages under the Fatal Accidents Acts and assessed the amount at £3,100. He also awarded her damages under the Law Reform (Miscellaneous Provisions) Act, 1934. The defendant appealed against the award under the Fatal Accidents Acts on the ground that the amount was excessive.

LORD GODDARD, C.J., said that it had been laid down that in cases like the present, when a judge had not given precise reasons for his decision or one could not see from his judgment whether he had taken into account something which he ought not, or had omitted to consider something which he should have taken into account, the Court of Appeal could only look at the total amount awarded and from that must come to a conclusion whether the sum was so excessively high or so unreasonably low that it must amount to an unreasonable estimate. The plaintiff was not, of course, the boy's wife but his mother, and a matter which had to be borne in mind, and to which they gave full effect, was that the moral obligation to keep his mother was very strong. There was, however, no legal obligation, because nowadays the law was different from what it used to be, and while a woman was bound to support her husband and her children if she could, children were no longer bound to support their parents. However, that was not a matter which weighed very heavily in the scale, because, no doubt, the boy had been a good son and would have remained a good son. He thought that if it had been the case of a wife, the sum of £3,100 would have been a very proper sum to have given, or, at any rate, it would not have been too small a sum to have awarded. Could they support the award of £3,100 in the case of a mother? After all, although the young man had not yet married—sensible young men did not marry so early as they used—there must have been a very strong chance that he would marry, and the more prosperous he became the more probable it would be that he would do so; and, if he had married, although no doubt he would have given something to his mother, it would probably have been very much less than he had given in the past. The court felt that Cassels, J., considered the case on exactly the same footing as if he were awarding damages to a widow, and they felt that the sum awarded was excessive in the case of a mother, and was higher than experience showed would be awarded in the case of a parent, especially in view of the fact that the son might very soon have married, although it appeared he had no matrimonial intentions at the time of his death. The court was always reluctant to interfere in cases like the present, because they knew the difficulty that all judges had in coming to a decision in them. It was about as difficult a task as could possibly be put upon a judge, and so he always felt when sitting at *nisi prius*. He had often felt that in really serious cases of that kind it was better to have a jury because the opinion of twelve people was probably more satisfactory than the opinion of one. The court had come to the conclusion that the right sum to have awarded would have been £1,500, and the damages under the Fatal Accidents Acts would be reduced to that figure.

HODSON and ROMER, L.JJ., delivered assenting judgments. Appeal allowed.

APPEARANCES: *F. W. Beney*, Q.C., and *Ronald Hopkins* (*F. J. Stewart & Co.*); *R. Marven Everett*, Q.C., and *Sir S. Worthington-Evans* (*G. Howard & Co.*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] **[1 W.L.R. 553**

RATING: WHETHER WORKSHOPS OF COMPANY COMPRISING MEMBERS OF MOTORING CLUB AN INDUSTRIAL HEREDITAMENT

Automobile Proprietary, Ltd. *v.* Brown (Valuation Officer)

Evershed, M.R., Jenkins and Romer, L.JJ. 29th March, 1955

Appeal from Lands Tribunal by case stated.

The appellant company was comprised of the members of the Royal Automobile Club, a club formed to encourage and develop motoring. It was not the object of the club to make a profit and no profits were distributed to its members. There were two types of members of the club: full members, who were required to be members of the company; and associate members, who were not members of the company, nor were entitled to use the club premises. All the members were entitled to certain services and facilities afforded by the company to the members as motorists, including the provision of a road service fleet. The cost of providing these services and facilities was met out of a separate fund consisting of the subscriptions of the associate members (which were wholly so used) and the capitation fees of full members of the club. In connection with the provision of these facilities the company occupied, and was rated in respect of, a hereditament described in the local valuation list as "workshops and appurtenances" and included in Pt. I of that list. The company contended that the hereditament ought to be treated as an industrial hereditament and be transferred to Pt. II of the list. The local valuation court and, on appeal, the Lands Tribunal, confirmed the entry in Pt. I. The company appealed.

EVERSHED, M.R., said that with the exception of a small part of the hereditament devoted to sign painting, brazing and bracket making, the hereditament was not within the definition of factory and workshop contained in s. 149 (1) of the Factory and Workshop Act, 1901. The primary purpose for which the hereditament was occupied was the repairing of units of the road service fleet, but that activity was not conducted "by way of trade" within s. 149 (1) (*c*) of the Act of 1901. The activities of the company, although distinct and different from that of providing the amenities of a social club in the West End of London, were nevertheless more akin to club activities than to trading in the ordinary sense. The case was, therefore, closer to *Inland Revenue Commissioners* v. *Eccentric Club, Ltd.* [1924] 1 K.B. 390, 400, than to *Challoner* v. *Robinson* [1908] 1 Ch. 49, on which the tribunal had relied. The further question as to whether, as was submitted on behalf of the valuation officer, the repair of road vehicles constituted "maintenance" within s. 3 (2) (*b*) of the Rating and Valuation (Apportionment) Act, 1928, did not arise. His lordship was of opinion that while *Potteries Electric Traction Co., Ltd.* v. *Bailey* [1931] A.C. 151 was distinguishable on the facts, acceptance of the view expressed on behalf of the valuation officer would have involved dissenting from the opinion clearly expressed by Lord Dunedin at p. 169 in that case.

JENKINS and ROMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *G. D. Squibb* (*A. J. A. Hanhart*); *Maurice Lyell*, Q.C., and *Patrick Browne* (*Solicitor of Inland Revenue*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 573**

APPEAL TO HOUSE OF LORDS: EDUCATION OF CHILD

B. *v.* B. (No. 3)

Jenkins and Hodson, L.JJ. 5th April, 1955

Application for leave to appeal out of time to House of Lords.

On 14th December, 1954, the Court of Appeal reversed the decision of Davies, J., and held that a girl, the child of a marriage which had been dissolved, should be brought up according to the wishes of her father in the Roman Catholic faith. The

Court of Appeal refused to the mother leave to appeal to the House of Lords, but she obtained leave to do so from the House. When the appeal came on for hearing (p. 334, *ante*), the father raised the point, which had been overlooked, that under s. 27 (2) of the Supreme Court of Judicature (Consolidation) Act, 1925, the decision of the Court of Appeal was final in a matrimonial cause or matter of this character " except . . . on a question of law on which the Court of Appeal gives leave to appeal." The mother applied to the Court of Appeal for leave to appeal to the House of Lords, notwithstanding the previous order refusing such leave.

JENKINS, L.J., said that the House of Lords had expressed no view as to whether the application should be made or acceded to. It was doubtful whether the Court of Appeal could entertain the application, inasmuch as an order had been drawn up, passed and entered, on the face of which leave to appeal to the House of Lords had been refused, but even assuming that that objection was answered, leave to appeal could not be properly given, for the question whether as a matter of law, in all the circumstances, the court was justified in reversing the order of the trial judge in the exercise of his discretion, though a question of law in a sense, was not a question of law of the kind contemplated by s. 27 (2) of the Act of 1925.

HODSON, L.J., agreed. Application dismissed.

APPEARANCES: *Simon*, Q.C., and *A. R. Ellis* (*Hunters*); *Russell*, Q.C., and *Roger Ormrod* (*Charles Russell & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 559

CHARTERPARTY: LOADING PLACE NOMINATED BY CHARTERERS UNSAFE: LIABILITY FOR DAMAGE TO SHIP

Compania Naviera Maropan S.A. *v.* Bowaters Lloyd Pulp and Paper Mills, Ltd.

Singleton, Hodson and Morris, L.JJ. 5th April, 1955

Appeal from Devlin, J.

By a charterparty dated 7th October, 1951, charterers chartered the steamship *Stork* to load a cargo of logs for carriage from Newfoundland to England. By cl. 1 of the charterparty it was agreed that the vessel should proceed to not more than two " approved loading places as ordered . . . or so near thereto as she may safely get. . . . Charterers have the right to order the ship to load at two safe berths or loading places. . . ." The charterers directed the ship to load at a place on the east coast of Newfoundland and she arrived there on 24th October, 1951. She was unable to moor on that day because an easterly wind was blowing. On the following day she was successfully moored and loading was commenced, but three days later, during a heavy gale in the night, she dragged her anchors, ran aground and was sever ly damaged. In proceeding again to the loading place, dropping his anchors and taking up his moorings, the master accepted the advice of a local pilot employed by the defendants. On a claim by the shipowners against the charterers for damages on the ground that the charterers had ordered the vessel to load at an unsafe place, Devlin, J., found that the loading place was unsafe, that the master had not been guilty of any negligence or imprudence, and that the shipowners were entitled to damages ([1954] 3 W.L.R. 894; 98 SOL. J. 821). The charterers appealed.

SINGLETON, L.J., said that " loading place " had been used in the charterparty instead of " port " by reason of the nature of the places at which pulpwood was loaded by the defendants. " Approved " meant approved generally in the trade or business; it must be satisfactory and recognised as normally safe for a ship of the size nominated. As many ships had loaded pulpwood at the place in question, it must be regarded as an approved loading place: but the charterers were under a duty to nominate a safe berth or loading place. Devlin, J., had held, rightly, that the loading place was unsafe. The charterers then submitted that even so the shipowners could not recover damages, as the master knew the risk and undertook it. In such a situation a master was in great difficulty; his duty was to fulfil the contract, if possible, and at the same time not to risk his ship; he was surely entitled to rely on the assurance given by the experienced pilot sent by the defendants to meet him. The doctrine of *volenti non fit injuria* did not apply. The nomination of an unsafe loading place was a breach of contract; the master was not bound to take his ship into such a place, and was placed in a dilemma. The question was whether he acted reasonably, and the judge, rightly, held that he had done so. He had followed his own decision in *Grace's* case [1950] 2 K.B. 383, in holding that the damage to the ship resulting from the nomination of an unsafe berth was recoverable against the charterers. The majority of the High Court of Australia in the *Reardon Smith* case [1954] 2 Lloyd's Rep. 148 (Dixon, C.J., dissenting) had disagreed with that decision; but the view of Devlin, J., and Dixon, C.J., was to be preferred. If charterers nominated a loading place, they expected the master to take the ship to that place. The judge was satisfied that the master had acted reasonably in accepting the assurances of the pilot: in so doing he was doing what the charterers wished and expected him to do, he believing that the charterers had directed him to a safe loading place. The damages flowed naturally from the charterers' breach of contract.

HODSON and MORRIS, L.JJ., agreed. Appeal dismissed. Leave to appeal.

APPEARANCES: *K. S. Carpmael*, Q.C., and *T. G. Roche* (*Lawrence Jones & Co.*); *E. W. Roskill*, Q.C., and *H. V. Brandon* (*Stokes & Mitcalfe*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 998

MONEYLENDER'S CONTRACT: COPY TO BE SERVED ON EACH OF JOINT BORROWERS

J. W. Grahame (English Financiers), Ltd. *v.* Ingram and Others

Evershed, M.R., Hodson and Parker, L.JJ. 21st April, 1955

Appeal from Sunderland County Court.

A moneylender sued for the repayment of money lent to four persons (one of whom had since died). The four borrowers had signed a memorandum of contract jointly and severally promising to repay to the moneylender £100, which was then advanced to the borrower who subsequently died, one Godfrey, with interest at 80 per cent. At the foot of that document they acknowledged that they had received a copy of the memorandum. The following day the moneylender sent to Godfrey two copies of the memorandum, one for himself and one for one of the three other borrowers, the defendant Ingram, but no copies were sent then or later for the other two borrowers. There was no evidence that Ingram received his copy within seven days of the signing of the contract, though he admitted receiving it at some date.

PARKER, L.J., in a leading judgment, said that the acknowledgment signed by the borrowers did not say that a copy of the memorandum had been sent or delivered to them. To comply with s. 6 of the Moneylenders Act, 1927, within seven days of the making of the contract, a copy of the memorandum should have been sent or delivered to each of the borrowers where, as in the present case, they were borrowing jointly and severally. The intention of the provision was that each borrower should know and possess a copy of the terms on which he had borrowed the money. Reference was made to *Eldridge* v. *Taylor* [1931] 2 K.B. 416, in which Scrutton, L.J., drew attention to the stringency of the regulations relating to moneylenders. Service of a copy on one borrower as agent of another would not satisfy the statute.

HODSON, L.J., and EVERSHED, M.R., agreed. Appeal dismissed.

APPEARANCES: *D. L. Wilkes* (*Gibson & Weldon*, for *S. H. Mincoff*, Newcastle upon Tyne); *J. R. Johnson* (*Torr & Co.*, for *Wilford, Speeding & Hanna*, Sunderland).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 563

SOLICITOR: COSTS: DISTINGUISHING CONTENTIOUS FROM NON-CONTENTIOUS BUSINESS: FORM OF BILL

***In re* a Solicitor; *In re* a Taxation of Costs**

Denning and Parker, L.JJ., and Roxburgh, J.

22nd April, 1955

Appeal from Gerrard, J. ([1955] 2 W.L.R. 281; *ante*, p. 96).

In March, 1953, a client who was previously resident in South Africa consulted a firm of solicitors concerning her matrimonial affairs. The solicitors advised her, amongst other matters, on questions of domicile, the custody of her children and maintenance from her husband, and took a proof of evidence of her matrimonial life. They obtained counsel's opinion on the question of domicile, attended a conference with counsel on the question of jurisdiction, instructed counsel to draft a petition for judicial separation, instructed inquiry agents on the client's behalf, instructed counsel to re-draft the petition, and generally

acted in the preparation of her case. On 14th June, before the petition was filed, the client terminated her retainer and instructed other solicitors. The second solicitors received the papers in the case from the first solicitors, and then negotiated with the husband's solicitors until December, 1953, when negotiations broke down. On 23rd December, 1953, her petition, for the most part as drafted by counsel instructed by the first solicitors, was filed, and on 26th December, 1953, it was served on the husband. On 3rd September, 1953, the first solicitors delivered to the client a lump sum bill for their costs. The bill was very detailed but not itemized. An itemized bill of costs was requested and refused, and the client thereupon issued a summons for an order that the first solicitors should deliver a detailed bill of their fees, charges and disbursements. On 16th December, 1953, the master ordered them to deliver a bill of costs. The first solicitors appealed, and Gerrard, J., upheld the decision of the master. He held that if all the business with which the bill was concerned had been of a non-contentious character, the bill would have been a good one. He was of opinion, however, that a number of the items were of a contentious character and that, consequently, the client was entitled to a detailed bill. The solicitors appealed.

DENNING, L.J., said that the case raised important questions about solicitors' costs. There was a great difference, so far as solicitors were concerned, between contentious and non-contentious business. A bill for the former must be made out item by item with a separate charge against each, but a bill for non-contentious business could be charged by a lump sum and such business was more remunerative than contentious business. Although so important to solicitors, no guidance was to be found anywhere to enable the profession to distinguish between the two classes of business. The Solicitors Act, 1932, evaded the issue, and was of no help in deciding difficult cases. They had been asked to draw a clear line between contentious and non-contentious business for the guidance of the profession and they would have liked to accede to that request if they could have done so. If a clear line was to be drawn there was only one place for it, namely, the issue of a writ or other originating process in the courts of law. It would be very convenient if that line could be drawn, but they were not at liberty to do so for the simple reason that that was not the line drawn by Parliament. The statutory distinction depended on the nature of the business—contentious or non-contentious—not on the time at which it was done. To take an example, a case sent to counsel to advise might in many cases be non-contentious business, but there were some cases in which it might be contentious. The taxing masters in their practice notes said that " a case to advise before action might be allowed as between party and party, if really useful and necessary, but sparingly " (see Annual Practice, 1954, p. 2834). It seemed to him that in cases where the costs of an opinion could be recovered against the other side, it must be contentious business. In his view where the work done before writ was of such a nature that if the case went to trial the cost would properly be allowed as against the other party on a party and party taxation, then it was contentious business, even though a writ was not in fact issued, but if it would not be so allowed then it was not contentious business. That test sounded vague, but managing clerks in solicitors' offices had a very good idea of what would or would not be allowed on taxation, and they would be able to apply the test and say without difficulty what was contentious business and what was not. All work done in the cause itself, after writ, was, of course, contentious. Applying the principles he had stated, a good deal of the business in the bill before them was contentious, and the solicitors should have delivered a separate bill of costs for it with detailed items and charges. Another bill should have been delivered for the non-contentious business and that might have been for a lump sum. The bill delivered was a bad bill because it treated all the business as non-contentious business, which was wrong. The second point raised was, assuming that the work was all non-contentious, was the bill a good one? That depended on what, since the coming into force of the Solicitors' Remuneration Order, 1953 (which made great alterations in the method of charging for non-contentious business), a solicitor's bill for non-contentious business must now contain. It need not contain detailed charges as was necessary before 1920, but it must contain a summarized statement of the work done, sufficient to tell the client what it was for which he was asked to pay. A bare account for " professional services " between certain dates, or for " work done in connection with your matrimonial affairs," would not do. The nature of the work must be stated, such as advising on such and such a matter, instructing counsel to do so and so, drafting such a document, and so forth. Tried by that test, the bill in the present case would have been good if the business had all been non-contentious. It failed because part of it was contentious. Two bills should have been delivered to cover the two kinds of business. He was in agreement with Gerrard, J., and the appeal must be dismissed.

PARKER, L.J., delivered judgment to the same effect, and ROXBURGH, J., concurred. Appeal dismissed.

APPEARANCES: *Sir Hartley Shawcross*, Q.C., and *Colin Duncan* (*Bull & Bull*); *Maurice Lyell*, Q.C., and *John Shaw* (*Forsyte, Kerman & Phillips*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] **[2 W.L.R. 1058**

CHANCERY DIVISION

SERVICE OUT OF JURISDICTION: CLAIM BY TRUSTEES AGAINST TRANSFEREES OF BANKRUPT'S ASSETS

Rousou's (a Bankrupt) Trustee *v.* Rousou

Danckwerts, J. 30th March, 1955

Application to serve writ out of the jurisdiction.

Rules of the Supreme Court, Ord. 11, r. 1, provides: " Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the court or a judge whenever . . . (*e*) the action is one brought *against a defendant not domiciled or ordinarily resident in Scotland*, to enforce, rescind, dissolve, annul or otherwise affect a contract or to recover damages or other relief for or in respect of the breach of a contract—(i) made within the jurisdiction or (ii) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or (iii) by its terms or by implication to be governed by English law . . ." R., a Cypriot by birth, carried on a business in England, where he became domiciled in 1935. On 10th August, 1951, R. committed an act of bankruptcy, and on 5th December, 1951, he was adjudicated bankrupt. On 17th June, 1951, R. authorised his attorney to withdraw a sum of money standing in the name of R. and his wife in a church fund in Cyprus, and to deposit this sum in the joint names of R.'s two children, who were both minors and natural-born British subjects, with a co-operative society in Cyprus. R. and his children subsequently left England, and in June, 1954, the children accompanied by their father withdrew the sum in question. R.'s trustee in bankruptcy, who had reason to believe that the children were resident or were to be found in Cyprus, applied for leave to serve a writ out of the jurisdiction upon the children to enable him to bring an action against them for the purpose of attaining payment to him of the sum in question.

DANCKWERTS, J., said that the trustee sought to impeach the transaction in various ways under the Bankruptcy Act, 1914, and the Law of Property Act, 1925, as constituting in itself an act of bankruptcy and as being a fraudulent conveyance or a voluntary settlement. Whichever way the claim was put, it was entirely statutory in origin, and at first sight seemed to have little or nothing to do with contract so as to enable the trustee to invoke Ord. 11, r. 1 (*e*). But authorities such as *Sinclair* v. *Brougham* [1914] A.C. 398 and *Bowling* v. *Cox* [1926] A.C. 751 indicated that by reason of the nature of the transaction which had been carried out the trustee was entitled, subject to anything which might arise in the action, to have the money paid over to him, and that that right was of a quasi-contractual nature. *Prima facie*, the trustee might well have a quasi-contractual right to recover the money from the transferees. The case accordingly fell within the terms of the rule, and service of the writ out of the jurisdiction might properly be allowed. Order accordingly.

APPEARANCES: *Muir Hunter* (*Sidney Pearlman*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 545**

LANDLORD AND TENANT: PROMISE OF MONEY FOR AGREEMENT BY LANDLORD TO ASSIGNMENT AND CHANGE OF USER: WHETHER ENFORCEABLE

Comber *v.* Fleet Electrics, Ltd.

Vaisey, J. 31st March, 1955

Action.

The Law of Property Act, 1925, provides by s. 144: " In all leases containing a covenant . . . against assigning, underletting, or parting with the possession . . . without licence or consent, such covenant . . . shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso

to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent. . . ." The Landlord and Tenant Act, 1927, provides by s. 19: "(1) In all leases . . . containing a covenant condition or agreement against assigning, underletting . . . demised premises or any part thereof without licence or consent, such covenant condition or agreement shall, notwithstanding any express provision to the contrary, be deemed to be subject—(*a*) to a proviso to the effect that such licence or consent is not to be unreasonably withheld . . . (3) In all leases . . . containing a covenant condition or agreement against the alteration of the user of the demised premises, without licence or consent, such covenant condition or agreement shall . . . be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that no fine or sum of money in the nature of a fine, whether by way of increase of rent or otherwise, shall be payable for or in respect of such licence or consent . . ." Plaintiff lessors sought to enforce against the defendant lessees an undertaking under which the defendants agreed to pay over to the plaintiffs the defendants' proportion of the compensation moneys payable in respect of a compulsory purchase of part of the demised premises by the local authority, in consideration of the plaintiffs granting a licence to assign the lease and a licence to underlet and change the user of the premises.

VAISEY, J., said that by virtue of s. 144 of the Act of 1925 and s. 19 (1) of the Act of 1927 a landlord could neither demand a fine for a licence to assign nor refuse consent unreasonably. As regards change of user, s. 19 (3) interfered fundamentally with ordinary contractual rights: it was designed to prohibit the passing of money on the giving of a consent to a change of user. However, if money did pass under such a bargain, it was very doubtful if the landlord would be subject to any penalty for having received it, and there was ample authority for saying that the money could not be recovered. In the present case the landlord had given consent and the tenants now refused to pay, pleading that they had attempted to assign their share of the compensation money for no consideration or for a consideration which was void. The proposed payment was a fine, or money in the nature of a fine. The action must fail, because the landlord had to come to court to enforce an agreement which lay entirely in contract, and the court could not grant the relief sought, in view of the statutory provisions affecting the transaction. Judgment for the defendants.

APPEARANCES: *E. M. Winterbotham* (*Janson, Cobb, Pearson and Co.*, for *F. H. Nye & Murdoch*, Brighton); *D. Stinson* (*Kimbers, Williams, Sweetland & Stinson*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 566**

WILL: BEQUEST OF "ALL OTHER MONEY . . . UP IN TRUST FOR MY FOUR GRANDCHILDREN . . . UNTIL EACH REACHES THE AGE OF TWENTY-FIVE YEARS": NO GIFT OF CORPUS

***In re* Arnould, deceased; Arnould *v.* Lloyd and Others**

Upjohn, J. 21st April, 1955

Adjourned summons.

By his will, dated 5th September, 1954, a testator provided: "All other money belonging to me I wish to be up in trust for my four grandchildren: Norton Arnould. Adrian Williams. Garry Bufton and Cheryell Bufton. until each reaches the age of twenty-five years." The will contained no gift of residue. He died on the day on which he had made his will. His executor by this summons asked the court to determine, *inter alia*, the effect of the bequest to the grandchildren.

UPJOHN, J., said that he had already construed the phrase "All other money" to be a specific gift of certain assets and not a general residuary gift. The point which he had to determine was whether this was a gift to the four grandchildren of the income until each attained the age of twenty-five years and then the corpus was undisposed of, or whether it was a gift of the corpus of the "other money" upon attaining the age of twenty-five years with a gift in trust in the meantime. There was no doubt that, having regard to the earlier authorities alone, the court then felt no great difficulty in implying such a gift of corpus in these circumstances, but the earlier authorities had subsequently been the subject of considerable criticism. The position was set out in Jarman on Wills (8th ed., vol. 2, p. 682). Counsel had relied on *Wilks* v. *Williams* (1861), 2 J. & H. 125, from which he had argued that the expression "I wish to be up in trust" meant that the money was to be held in trust until the children respectively had attained twenty-five years and then it was to be transferred to them. In the case of *In re Hedley's Trusts* (1877), 25 W.R. 529, a testatrix gave all the residue of her estate to a trustee upon trust for her daughter till she should attain the age of twenty-one years or marry, whichever should first happen, and it was held that there was no implied gift of the capital to the daughter on her attaining twenty-one or marrying. In *In re Tottenham* (1946), 174 L.T. 367, Wynn Parry, J., had said that the matter appeared ultimately to be one purely of construction, and there was a convenient statement of the general principle in *In re Hedley's Trusts* by Hall, V.-C., who said that the court was not entitled to depart from the strict letter of the will, unless there was some context to enable the court to do so. In that state of the authorities, it seemed that his duty was to apply the ordinary rule of construction, and not insert or read in words unless the context required him to do so. Applying that principle, he could not, without doing violence to the language the testator had used, imply a gift of corpus to the four grandchildren, and he would therefore declare that on the true construction of the will the grandchildren took an interest in the income of the property until each attained the age of twenty-five. Declaration accordingly.

APPEARANCES: *G. A. Grove* (*Ward, Bowie & Co.*, for *Scobie and Beaumont*, Hereford); *J. L. Arnold* (*T. D. Jones & Co.*, for *D. J. Treasure & Co.*, Blackwood); *H. E. Francis* (*F. W. Mulley* with him) (*T. D. Jones & Co.*, for *D. J. Treasure & Co.*, Blackwood).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 539**

QUEEN'S BENCH DIVISION

MASTER AND SERVANT: INJURY TO WORKMAN: TOOL WITH LATENT DEFECTS: LIABILITY OF EMPLOYERS AND TOOLMAKERS

Mason *v.* Williams & Williams, Ltd., and Another

Finnemore, J. 14th February, 1955

Action tried at assizes.

A chip of metal flew off a cold chisel which the plaintiff was using at work and struck him in the eye. The head of the chisel was dangerously hard but this defect was not apparent. The plaintiff's employers had bought the chisel from reputable makers and it was a new one which had been in use for only two or three weeks before the accident. The plaintiff's employers had not examined it at any time. The plaintiff brought an action against his employers and the makers of the tool, claiming damages for negligence.

FINNEMORE, J., said that the question was whether the employers or the makers were responsible. It had been said that the employers ought to have inspected the tool; but if employers bought tools from reputable makers, such as the second defendants were, they were not bound to examine them either before or after use, unless there was something which called their attention to the possibility of there being something wrong. In the present case the chisel was new, and was used by the plaintiff as it had come from the factory. The employers were accordingly not liable. As regards the second defendants, when the chisel came from their works the head was too hard, and that undue hardness could have been produced either carelessly or deliberately; that was as far as the plaintiff could be expected to take his case; he had discharged the onus of proof and established a breach of duty on the part of the makers towards himself, a person who in their contemplation would use the chisel. Judgment for the employers, and against the manufacturers.

APPEARANCES: *D. Pennant* (*Rowley, Ashworth & Co.*, Manchester); *N. Richards* (*Laces & Co.*, Liverpool); *W. Mars-Jones* (*Neal, Scorah, Siddons & Co.*, Sheffield).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 549**

PRACTICE NOTE

CERTIORARI: APPLICATION FOR EXTENSION OF TIME: RESPONDENT TO BE NOTIFIED

R. *v.* Ashford, Kent, Justices; *ex parte* Richley

Lord Goddard, C.J., Hilbery and Pearce, JJ.

27th April, 1955

Application for order of certiorari.

The applicant applied for certiorari to quash an affiliation order made on 29th December, 1953, by the Ashford justices

whereby the applicant was ordered to pay 20s. a week to a woman for the maintenance and education of her bastard child of which the applicant was adjudged to be the putative father. On 15th February, 1955, the applicant applied *ex parte* to the Divisional Court for leave (which was granted) to apply for certiorari more than six months after the date of the justices' order. No notice was given to the respondent of the application and she did not appear on that occasion. At the present hearing counsel for the respondent indicated that, in the circumstances, he could not oppose an extension of time.

LORD GODDARD, C.J., having refused the application for certiorari, said that there was one matter on which he wanted to say a word of general application with regard to orders of certiorari. R.S.C., Ord. 59, r. 4 (2), provided that motions for certiorari must be made within six months of the making of the order which it was sought to quash. The court had power, of course, to extend the order, and the present case was one in which it would be right to apply for the order to be extended. But where a person intended to apply to the court for an extension of time he must give notice to the person whom he would serve in the ordinary way and who would be affected if the order challenged was quashed, that he intended to apply for an extension, because the person affected had a right to be heard and to object to such an extension. He very likely had what could be called a vested interest in the upholding of the order. In the same way, if an application was made to the Court of Appeal out of time, it must be made on motion for the time to be extended; and as application had to be made to the Divisional Court when justices had not stated a case within the requisite time, so, when moving for certiorari out of time, notice must be given to the person who would be made in the ordinary way respondent to the motion, in order that he might be heard as to whether or not it was a fit case in which to extend the time.

APPEARANCES: *Frank Whitworth* (*Kingsford, Dorman & Co.*, for *Kingsford, Flower & Pain*, Ashford, Kent); *J. H. Gower* (*Lovell, Son & Pitfield*, for *Willmott, Elwell & Taylor* Ashford, Kent).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 562**

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: DEATH OF APPELLANT: WHETHER WIDOW ENTITLED TO PROCEED WITH APPEAL

R. *v.* Rowe

Lord Goddard, C.J., Hilbery and Pearce, JJ.

19th April, 1955

Application for leave to appeal against conviction.

On 15th February, 1955, one Ivor Clyde Rowe was convicted on four counts of obtaining money by false pretences and sentenced to eighteen months' imprisonment. On 21st February, 1955, within time, he gave notice of appeal, and on the night of 6th–7th March, before the application had been considered, he died in prison. His widow applied to the court to allow the appeal to proceed.

LORD GODDARD, C.J., said that in the opinion of the court they could not allow a widow or an administrator of a deceased person to appeal unless they could show a legal interest. If a person was sentenced to pay a fine and died having appealed, it might be that the court would allow executors or administrators to appeal, merely on the ground that if the conviction were quashed they could recover the fine for the benefit of the estate of the deceased which they were bound to administer (see *Hodgson v. Lakeman* [1943] 1 K.B. 15). It might be that it was artificial to say that if there was a pecuniary penalty an appeal might lie, whereas if corporal punishment or imprisonment was imposed there could not be an appeal, but there was no ground in the present case on which it could be said that anybody had an interest. It might be that the widow would be very glad to have her husband's name cleared, but they could not take any notice of that sentimental interest. There was nobody now affected by the judgment of the court because the judgment was a sentence of imprisonment, and it would be a very novel step if, in the circumstances, the court said that they would entertain an appeal. Application refused.

APPEARANCES: *Peter Lewis* (*Giffen & Couch*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[2 W.L.R. 1056**

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 6th May:—

Air Force.
Appropriation.
Army.
British Museum.
Children and Young Persons (Harmful Publications).
Clyde Navigation (Superannuation) Order Confirmation.
Crofters (Scotland).
Finance.
Glasgow Corporation (Extension of Time) Order Confirmation.
Isle of Man (Customs).
Mersey Tunnel.
National Insurance.
Oil in Navigable Waters.
Pensions (India, Pakistan and Burma).
Public Libraries (Scotland).
Public Service Vehicles (Travel Concessions).
Requisitioned Houses and Housing (Amendment).
Revision of the Army and Air Force Acts (Transitional Provisions).
Saint Stephen Coleman Street.

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Bournemouth Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [29th April.
Doncaster Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [5th May.
German Potash Syndicate Loan Bill [H.L.] [3rd May.

Read Second Time:—

Chatham and District Traction Bill [H.L.] [5th May.
Cheshunt Urban District Council Bill [H.C.] [3rd May.
Maidstone Corporation Bill [H.L.] [5th May.
Nuneaton Corporation Bill [H.C.] [3rd May.
Sandown-Shanklin Urban District Council Bill [H.C.] [3rd May.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time:—

Ministry of Housing and Local Government Provisional Order (Colne Valley Sewerage Board) Bill [H.C.] [4th May.

B. QUESTIONS

COMMON LAND (GRAZING)

Mr. AMORY said that the difficulties of making efficient use of commons for grazing purposes were primarily legal. A prerequisite was full agreement of the commoners. He had the matter very much under consideration. [2nd May.

INTERNATIONAL COURT OF JUSTICE (JUDGMENTS)

Mr. TURTON said that under art. 94 (1) of the United Nations Charter each member State had undertaken to comply with the decision of the International Court of Justice in any case to which it was a party. Moreover, art. 94 (2) provided for recourse to the Security Council if measures were needed to give effect to the court's judgment. [2nd May.

DIVISIONAL COURT (POLICE APPEALS)

The ATTORNEY-GENERAL said that in 1954 thirty-seven cases had been stated to the Divisional Court at the instance of police officers. They had been successful in twenty-seven of those cases. [2nd May.

TOWN AND COUNTRY PLANNING ACT (CLAIMS)

Mr. DUNCAN SANDYS said that compensation under the Town and Country Planning Act, 1954, was based upon claims established by the 1947 Act. Those had had to be submitted before July, 1949. In respect of England and Wales there were some 415,000

of such established claims representing a total development value of about £350 million. Information about the area to which they related was not available. [3rd May.

LEGAL AID (RENT INCREASES)

Mr. JANNER asked the Attorney-General whether he was aware that, owing to their inability to obtain legal aid or advice, large numbers of tenants throughout the country had agreed to pay additional rents in excess of the amounts awarded by county courts or tribunals in respect of similar accommodation in the same or adjoining buildings; and whether he would take immediate steps to extend legal aid for those tenants whose position had not yet been crystallised in respect of the Housing Repairs and Rents Acts.

THE ATTORNEY-GENERAL said that he understood that many increases of rent authorised by the Housing Repairs and Rents Act had been agreed between landlord and tenant; he was not aware that such increases had in general been greater than those awarded by county courts or rent tribunals, and he had no evidence that the tenants who had agreed to them had done so in ignorance of their legal rights. As the hon. member already knew, the Government had decided to make legal aid available for all types of county court proceedings which were covered by the Legal Aid and Advice Act, 1949. The hon. member would appreciate that a considerable amount of administrative work would be necessary before the Lord Chancellor would be in a position to make the appropriate order under the Act, and he could not yet say when that order would be made. [4th May.

TOWN AND COUNTRY PLANNING (CLAIMS)

Mr. DEEDES said that up to 29th April, 1955, the Central Land Board had received 78,829 applications for payments under Pt. I of the Town and Country Planning Act, 1954. Of the total applications received, 13,489 had been from claim-holders who had paid a development charge. [5th May.

HOUSING REPAIRS AND RENTS ACT (RENT TRIBUNAL CASES)

Mr. DEEDES stated that up to 31st March, 1955, there had been 1,737 applications to thirty-one tribunals to determine the amounts of increases of rents under the Housing Repairs and Rents Act, 1954. Of these 1,078 had been decided. [5th May.

STATUTORY INSTRUMENTS

Agriculture (Poisonous Substances) Regulations, 1955. (S.I. 1955 No. 632.) 8d.

Anthrax Disinfection Fee (Amendment) Rules, 1955. (S.I. 1955 No. 659.)

Canals (Additional Charges) (Amendment) Regulations, 1955. (S.I. 1955 No. 671.)

Control of Paper (Newspapers) (Economy) (Amendment No. 2) Order, 1955. (S.I. 1955 No. 675.)

Exchange Control (Authorised Dealers) (Amendment) Order, 1955. (S.I. 1955 No. 637.)

Exchange Control (Authorised Depositaries) (Amendment) (No. 2) Order, 1955. (S.I. 1955 No. 638.)

Exchange of Securities (No. 2) Rules, 1955. (S.I. 1955 No. 651.) 5d.

Hair, Bass and Fibre Wages Council (Great Britain) Wages Regulation Order, 1955. (S.I. 1955 No. 646.) 6d.

Harbours, Docks and Piers (Additional Charges) (Amendment) Regulations, 1955. (S.I. 1955 No. 672.)

Import Duties (Drawback) (No. 3) Order, 1955. (S.I. 1955 No. 649.)

London Traffic (Prescribed Routes) (Carshalton) Regulations, 1955. (S.I. 1955 No. 662.)

National Health Service (Coatbridge, Airdrie and District Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 621 (S. 67).) 6d.

National Health Service (Craig Dunain Hospital Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 645 (S. 77).) 5d.

National Health Service (Crichton Royal Mental Hospital Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 629 (S. 71).) 6d.

National Health Service (Glasgow Dental Hospital and School Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 612 (S. 65).) 6d.

National Health Service (Glasgow North-Eastern Mental Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 635 (S. 75).) 6d.

National Health Service (Glasgow Northern Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 630 (S. 72).) 6d.

National Health Service (Glasgow Royal Mental Hospital Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 613 (S. 66).) 6d.

National Health Service (Lanarkshire Mental Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 622 (S. 68).) 6d.

National Health Service (Lennox Castle and Associated Institutions Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 634 (S. 74).) 6d.

National Health Service (Motherwell, Hamilton and District Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 628 (S. 70).) 6d.

National Health Service (Northern Region Hospital Board, Scotland, Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 644 (S. 76).) 5d.

National Health Service (Western Region Hospital Board, Scotland, Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 631 (S. 73).) 5d.

North Devon Water Board (No. 2) Order, 1955. (S.I. 1955 No. 647.)

North of Scotland Hydro-Electric Board (Constructional Scheme No. 71) Confirmation Order, 1955. (S.I. 1955 No. 624 (S. 69).)

Post Office Savings Bank Amendment (No. 4) Regulations, 1955. (S.I. 1955 No. 627.) 5d.

Probation Rules, 1955. (S.I. 1955 No. 639 (L. 3).) 5d.

Purchase Tax (No. 4) Order, 1955. (S.I. 1955 No. 668.) 5d.

Railways (Additional Charges) (Amendment) Regulations, 1955. (S.I. 1955 No. 673.) 5d.

Remuneration of Teachers Amending Order, 1955. (S.I. 1955 No. 633.)

River Purification Authority (Commencement No. 7) Order, 1955. (S.I. 1955 No. 653 (C. 3) (S. 79).)

Severn River Board (Melverley Internal Drainage District) Order, 1955. (S.I. 1955 No. 655.) 5d.

Staffordshire Potteries Water Board Order, 1955. (S.I. 1955 No. 648.)

Stopping up of Highways (London) (No. 17) Order, 1955. (S.I. 1955 No. 618.)

Stopping up of Highways (West Riding of Yorkshire) (No. 1) Order, 1955. (S.I. 1955 No. 619.)

Town and Country Planning (Diversion of Payments) (Scotland) Regulations, 1955. (S.I. 1955 No. 652 (S. 78).) 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

DEATH DUTY FORMS STOCKED AT CERTAIN POST OFFICES

It is stated by the Board of Inland Revenue that owing to the fall in the demand for the undermentioned death duty forms, stocks will not be held by Post Offices after 31st May, 1955. Thereafter they will be obtainable only on application to the Estate Duty Office at Minford House, Rockley Road, West Kensington, London, W.14.

The forms concerned are: *Legacy and Succession Duty*—1, 2, 3, 3–1, 4, 5, 6, 6–1, 7, 7–1, 8 and 21. *Inland Revenue Affidavits*—B.2 and B.4.

SATELLITE PROPERTY: CLAIMS UNDER THE TREASURY DIRECTIONS

The Board of Trade acting under the powers granted to them by the Treaty of Peace (Roumania) Order, 1948, the Treaty of Peace (Hungary) Order, 1948, and the Treaty of Peace (Bulgaria) Order, 1948, have prescribed six forms (Forms RA, RA (S), HA, HA (S) and BA, BA (S)) for use in making certain claims for debts. The debts are of the kinds specified in Amendment No. 1 to the Treasury Direction of 26th July and 6th August, 1954.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased, on the recommendation of the Lord Chancellor, to appoint Mr. MYER ALAN BARRY KING-HAMILTON, Q.C., to be Recorder of the City of Hereford, with effect from 6th May, 1955.

Mr. GEORGE S. NICHOLSON, solicitor, of Oldham, has been appointed full-time magistrates' clerk for Upper Agbrigg and Saddleworth.

Mr. LEONARD KEITH ROBINSON, chief assistant solicitor to Bristol Corporation, has been appointed Deputy Town Clerk of Birkenhead.

Personal Notes

Major A. T. Preston, solicitor, of Shrewsbury, was the Officer Commanding the guard of honour furnished by the 5th Battalion The King's Own Royal Regiment (T.A.) at Lancaster during the recent tour of Lancashire by Her Majesty the Queen.

Mr. R. F. Champion, solicitor, of Tenterden, was married on 23rd April to Miss Elizabeth Mary Garner-Sarenson, of Highgate.

Miscellaneous

FIFTEENTH CLARKE HALL LECTURE

Owing to the interest aroused by the Clarke Hall Lecture to be held on 19th May next, and the unprecedented demand for invitations, Middle Temple Hall has proved too small to hold all those wishing to attend. The Lecture will now be held in the Assembly Hall, Church House, Westminster (entrance in Great Smith Street), at 4.30 p.m., as previously arranged.

All those who have advised the Fellowship of their intention to be present are being informed of this change of venue.

DEVELOPMENT PLANS

NORWICH DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved, with modifications, the development plan for the County Borough of Norwich. The plan, as approved, will be deposited in the City Hall for inspection by the public.

THE LAW SOCIETY

In The Law Society's Final Examination held on 14th–17th March, 1955, 157 candidates were successful out of a total entry of 316. The Council have awarded the Sheffield Prize to Thomas James Arkwright, LL.B., and the John Mackrell Prize jointly to Thomas James Arkwright, LL.B., and Derek Mendes da Costa.

SPECIAL PRIZES FOR THE YEAR 1954

The Law Society have announced the award of the following prizes for the year 1954: The Scott Scholarship, Michael Bernard Conn, LL.B.; the Broderip Prize for Real Property and Conveyancing, Peter Langrish Broadway; the Clabon Prize, Peter Howard Mellors, M.A., LL.B.; the Robert Innes Prize, David Richard Coatman, M.A.; the Maurice Nordon Prize, David Biart, LL.B.; the Local Government Prize, John Arthur Conkerton, B.A.; the John Marshall Prize, Michael Bernard Conn, LL.B.; the Geoffrey Howard-Watson Prize, William Anthony Lee, B.A., and Philip Thomas Ely; the Justices' Clerks' Society's Prize, Thomas David Andrews and Dennis Pollard; the Samuel Herbert Easterbrook Prize, Julian Philip Earle Welby; the Cecil Karuth Prize, Michael Francis Cain and Herbert Gerald Procter; the Atkinson Conveyancing Prize for Liverpool or Preston Students, Derek Hazlitt Morris; the Birmingham Law Society's Bronze Medal, David Biart, LL.B.; the City of London Solicitors' Company's Prize, Michael Bryant Boreham, LL.B.; the City of London Solicitors' Company's Grotius Prize, Michael Bryant Boreham, LL.B.; the Sir George Fowler Prize, Frank Kwabena Mensa-Bonsu, B.A.; the Stephen Heelis Prize for Manchester and Salford Students, James Percy Barker, LL.B.; the Mellersh Prize, Peter Langrish Broadway; the Newcastle upon Tyne Prize, Richard Wilfred Farr, B.A., LL.B.; the Wakefield and Bradford Prize, Peter Hedley Curnow, LL.B.; the Render Prize, Patricia Elizabeth McCoskrie; the Alfred Syrett Prize, John Overy Holroyd-Doveton.

Wills and Bequests

Mr. H. W. Chandler, retired solicitor, of Basingstoke and Fleet, Hampshire, left £80,254 (£79,823 net). After legacies and bequests he left the residue to the trustees to form "The Penton Trust Fund" in memory of his late grandfather, George Penton, formerly of Basingstoke, and afterwards of the London and Burton Brewery, Ratcliff, and his mother, to enable elderly men and women of limited means who have attained the age of sixty-five, and are unequal to the labour and responsibility of household management or housekeeping, to reside in a comfortable residential hotel, boarding house, hostel, apartment house, or institution, within a radius of twelve miles from Basingstoke Town Hall, declaring that "in selecting beneficiaries the Penton trustees shall also consider favourably and if possible give priority to the claims of any person or persons who has or have an unmarried daughter living with and keeping house for him, her or them to the intent that such unmarried daughter may be released from her responsibility of keeping house for her parent or parents and enabled, if she so desires, to engage in some form of paid employment and enjoy the amenities of life."

Mr. Henry Ingledew, retired solicitor, of Newcastle-on-Tyne, left £58,036 (£57,641 net).

Mr. G. C. Morley, solicitor, of Clifford's Inn, E.C.4, left £97,670 (£96,669 net).

Mr. J. W. Needham, retired solicitor, of Manchester, left £93,531 (£91,541 net).

Mr. Joshua Owen Steed, retired solicitor, of Long Melford, Sudbury (Suffolk) and Haverhill, left £63,437 (£61,520 net).

Mr. E. E. Winterbotham, solicitor, of Hampstead, left £73,901 (£72,943 net).

OBITUARY

MR. J. M. BARNETT

Mr. John Marshall Barnett, retired solicitor, of Nottingham, died on 3rd May, aged 74. He was admitted in 1903.

MR. V. PAGE

Mr. Vaughan Page, retired solicitor, late of Canterbury, died on 22nd April, aged 86. He was admitted in 1902.

SOCIETIES

More than seventy members of the LOCAL GOVERNMENT LEGAL SOCIETY attended the Annual Provincial Meeting at Leicester on 30th April, 1955. They were entertained to luncheon by the Lord Mayor (Alderman C. H. Harris) who was accompanied by the High Bailiff (Alderman Colonel A. Halkyard, M.C., T.D., D.L.), and other members of the City Council. The Chairman of the Society (Mr. J. K. Boynton, M.C.) thanked the Lord Mayor and Corporation for their hospitality.

Mr. W. L. Miron, O.B.E., T.D., Deputy Chairman of the East Midlands Division of the National Coal Board and former Secretary and Legal Adviser of the Division, gave an interesting paper in the morning on the subject of "The Public Corporation." After stating that the term had no statutory or judicial definition, he referred to the late Sir Arthur Street's classification into three major categories—non-industrial regulatory bodies (e.g., a New Town Development Corporation); industrial regulatory bodies (e.g., an Industrial Development Council); and managerial bodies (e.g., British Transport Commission). He thought that the following definition would cover most, though not necessarily all, the bodies regarded as public corporations: "A financially autonomous body, not operating for private profit, created by an act of State, to provide a monopoly of goods or services, on a commercial basis where trading is engaged in, ultimately responsible through a Minister of the Commons to Parliament and the public but free from full continuous or day-to-day Ministerial control." Commercial companies could come into existence automatically when certain formalities were complied with.

Normally their affairs were regulated by Memorandum and Articles of Association: public corporations, on the other hand, could only be created by Act of Parliament (or exceptionally, by Charter) which, however, contained provisions closely resembling those of the Memorandum and Articles. The statute (or charter) generally laid a mandatory duty on a public corporation to carry out its primary or monopolistic function, and often coupled with it the power to carry out a secondary function at its discretion. Mr. Miron wondered whether the writ of mandamus would lie against a public corporation at the suit of a claimant who could prove a clear right to the performance of a duty by that body. Passing to the organisation of the various public corporations, he underlined the constant need for flexibility and the desirability of periodic "organisation audits." He hoped something would be done to standardise the nomenclature of the various subordinate formations—the words Division, District, Area, Sub-Area, Group, Region—each had different connotations in relation to different corporations. Constitutionally public corporations were responsible to the Government of the day, and legally they were independent legal personalities, and they could sue and be sued and be made criminally liable; they had to pay rates and taxes; they had most of the rights and liabilities of a private person or body; they had come to occupy important and singular places in the constitutional life of the nation, but their final evolution had not yet been fully worked out.

THE LAW ASSOCIATION

"Management," said a beneficiary one day to the Secretary of The Law Association. "That's my code word, management, and I get a great kick out of it." She went on to describe how the code worked. There was the day an introduction came along to a foreign girl who needed a room for three months while on a study course in this country. The beneficiary had a small room she was anxious to let, to help pay her rather heavy rent. But one or two additional items of furnishing were necessary. There was a pair of shoes in good condition, that hurt her since arthritis had set in in her feet. They fetched £1. There was an old card table that needed a new cover and a nail or two, and an old, hand-powered carpet sweeper that no longer swept. Together they fetched 15s. There was an opportunity for some spare-time envelope addressing, which brought in a little more grist to the mill. The furnishings were paid for, the bathroom was painted by her own hand, and our beneficiary netted a pound a week from her foreign guest for three months and gained in addition a satisfaction and sense of achievement that cheered her almost as much as the money. That is the spirit of the people The Law Association sets out to help; widows, daughters and sisters of London solicitors who, buffeted themselves by ill-fortune of various sorts, have been unable to leave them equipped to face the financial hazards of life alone. The Association will welcome interested guests from the profession at its Annual General Court to be held this year on Wednesday, 25th May, at The Court Room, 60 Carey Street, W.C.2, at 2 o'clock, when the Secretary will be available to supply any information required. Busy solicitors will be glad to know that the business of the meeting usually ends shortly after 2.30 p.m., and that if they cannot manage to be present, they can obtain particulars and forms of application from the Association's offices, 25 Queensmere Road, S.W.19 (WIM 4107).

PRACTICE DIRECTION

PROBATE AND DIVORCE REGISTRY: REGISTRAR'S DIRECTION

COSTS: OBJECTION TO TAXING OFFICER'S DECISION

Any party dissatisfied with the decision of a taxing officer of the Probate and Divorce Registry may, in accordance with Ord. 65, r. 27, reg. 39, lodge formal written objections, which will be dealt with by a Registrar. In order to save expense and delay, however, it is the practice of the Registrars to hear informal references from the taxing officers on disputed items in unopposed taxations, or, by agreement, in opposed taxations.

Practitioners wishing to take advantage of this procedure should at the end of the taxation merely request the taxing officer to refer the items about which they are dissatisfied to a Registrar.

B. LONG,
Senior Registrar.

5th May, 1955.

CASES REPORTED IN VOL. 99

19th March to 14th May, 1955

For cases reported up to and including 12th March, see *ante*, p. 190

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: **102–103 Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.**

Annual Subscription: **Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).**

Advertisements **must be received first post Wednesday.**

Contributions **are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).**

5

PAGE
238
276
203
338
276
235
291
233
335
334
335
306
258
290
319
260
238
306
318
258
337
336
205
305
259
335
305
275
321
203
259
336
220
233
204
239
204
260
234
259
291
257
274
320
222
277
239
289
305
217
316
320
318
274
338
204
218
221
218
277
235
317
222
233
220
275
338
223
221
321
223
275
238
339
321
256
337
276
290
235
317
336
221
257
334
205
258
209
293
236
222
235
277
316
234
240
319

Lane,

vable

y the

RNAL